

2598
No. 12324

United States
Court of Appeals
for the Ninth Circuit.

AUDREY CUTTING and SYLVIA A. HENDERSON,

Appellant,

vs.

RAY BULLERDICK, et al,

Appellees.

Transcript of Record
In Three Volumes
Volume I
(Pages 1 to 116)

Appeal from the District Court for the
Territory of Alaska,
Third Division

FILED

AUG 4 1950

PAUL P. O'BRIEN

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court for the Territory of Alaska,
Third Division

No. A-5087

RAY BULLERDICK, A. L. BAXLEY, EDWARD
C. RANKLIN, LEE RUNKLE, ARDEN
BELL, and WILLIAM BESSER,

Plaintiffs,

vs.

RALPH R. THOMAS, AUDREY CUTTING and
RUSSELL W. SMITH,

Defendants.

COMPLAINT

Come now the plaintiffs in the above-entitled action, and complaining against the defendants herein, for their respective causes of action severally allege as follows:

First Cause of Action

The plaintiff, Ray Bullerdick, for cause of action alleges:

I.

That at all times hereinafter mentioned the defendant, Ralph R. Thomas, was, ever since, has been and now is, the owner of that certain real property situate in the City of Anchorage, Alaska, particularly described as follows, to wit:

Lot Two (2) in Block Thirty-Seven D (37D)
of the South Addition to the City of Anchorage,

Alaska, according to the official map and plat thereof on file in the office of the Recorder for the Precinct of Anchorage, Third Division, Territory of Alaska.

II.

That during all the times hereinafter mentioned the defendant, Audrey Cutting, was, ever since has been, and now is, the reputed owner of the above-described premises, and has or claims to have some right, title, or interest in said premises, the nature of which is unknown to the plaintiffs in this action and therefore not stated.

III.

That during all the times hereinafter mentioned the defendant, Russell W. Smith, had charge of and was engaged in the construction of a building on the premises hereinbefore described, under a contract with the defendant, Audrey Cutting, the nature and terms of which are unknown to the plaintiffs in this action and therefore not stated; that said construction was with the knowledge, consent and at the instance of the defendant, Ralph R. Thomas.

IV.

That the whole of the premises hereinbefore described is required for the convenient use and occupation of the building hereinbefore mentioned.

V.

That on or about the 15th day of May, 1948, the

defendant, Russell W. Smith, employed plaintiff to work as a carpenter in the construction of the building hereinbefore mentioned, on the premises hereinbefore described, at the agreed wage of \$2.66 per hour. That pursuant to said employment, during the period beginning May 15th, 1948, and ending June 19th, 1948, this plaintiff performed 236 hours labor on said building as a carpenter, and there became due and owing from defendant to said plaintiff for said services the sum of Six Hundred and Twenty-seven Dollars and Seventy-six Cents (\$627.76). That the defendant has not paid the same nor any part thereof although frequently requested so to do, and the same is now due and owing from defendant to plaintiff.

VI.

That by reason of the premises plaintiff acquired a lien upon the premises hereinbefore described, including the building constructed thereon as aforesaid, for the sum due him as aforesaid, and for the purpose of securing and perfecting his said lien, plaintiff on the 30th day of June, 1948, filed for record in the office of the Recorder for the Anchorage Recording Precinct, Territory of Alaska, a true statement of his demand, duly verified by him, after deducting all just credits and offsets, with the name of the owner and reputed owner, and also the name of the person by whom he was employed, and also a description of the property to be charged with said lien sufficient for identification; that said

statement was duly recorded in Book 70 of City records of said recording precinct at Page 247.

That plaintiff paid for filing and recording said lien statement the sum of \$2.55.

VII.

That the sum of Seven Hundred and Fifty Dollars (\$750.00) is a reasonable amount to be allowed by the court as attorney fees for the prosecution of this suit.

Second Cause of Action

The plaintiff, A. L. Baxley, for cause of action alleges:

I.

Plaintiff re-affirms, re-alleges and adopts as a part of his cause of action, all the allegations set forth in paragraphs I, II, III, IV, and VII of the first cause of action of this complaint.

II.

That on or about the 3rd day of May, 1948, the defendant, Russell W. Smith, employed plaintiff to work as a carpenter in the construction of the building hereinbefore mentioned, on the premises hereinbefore described, at the agreed wage of \$2.66 per hour; that pursuant to said employment, during the period beginning May 3rd, 1948, and ending June 10th, 1948, plaintiff performed 268 hours labor as a carpenter on said building and there became due and owing from defendant to plaintiff for said services the sum of Seven Hundred and Twelve Dollars and Eighty-eight Cents (\$712.88).

That the said defendant is also indebted to this plaintiff for lumber furnished by plaintiff to defendant at defendant's request, during the period last mentioned, which was used by defendant in the construction of said building, and for which defendant promised and agreed to pay.

That the defendant has not paid the amounts so due as aforesaid for services rendered and material furnished, nor any part thereof, although frequently requested so to do, and by reason of the premises the sum of Nine Hundred and Fourteen Dollars and Eighty-eight Cents (\$914.88) is now due and owing from defendant to plaintiff.

III.

That by reason of the premises plaintiff acquired a lien upon the premises hereinbefore described, including the building constructed thereon as aforesaid, for the sum due him as aforesaid, and for the purpose of securing and perfecting his said lien plaintiff on the 30th day of June, 1948, filed for record in the office of the Recorder for the Anchorage Recording Precinct, Territory of Alaska, a claim containing a true statement of his demand, duly verified by him, after deducting all just credits and offsets, with the name of the owner and reputed owner, and also the name of the person by whom he was employed and to whom he furnished the materials, and also a description of the property to be charged with the lien sufficient for identification; that said claim was duly recorded in Book 70 of City Records of said recording district and

precinct on Page 246; that plaintiff paid for filing and recording his said claim the sum of \$2.55.

That a true and correct copy of said Claim of Lien is hereunto annexed, marked "Exhibit B" and made a part of this complaint.

Third Cause of Action

The plaintiff, Edward C. Rankin, for cause of action alleges:

I.

Plaintiff re-affirms, re-alleges and adopts as a part of his cause of action, all the allegations set forth in paragraphs I, II, III, IV, and VII of the first cause of action of this complaint.

II.

That on or about the 17th day of May, 1948, the defendant, Russell W. Smith, employed plaintiff to work as a carpenter in the construction of the building hereinbefore mentioned on the premises hereinbefore described, at the agreed wage of \$2.66 per hour; that pursuant to said employment, during the period beginning May 17th, 1948, and ending June 12th, 1948, plaintiff performed 186 hours labor as a carpenter on said building and there became due and owing from defendant to plaintiff for said services the sum of Four Hundred and Ninety-four Dollars and Seventy-six Cents (\$494.76); that the defendant has not paid the same nor any part thereof although frequently requested so to do, and the same is now due and owing from defendant to plaintiff.

III.

That by reason of the premises plaintiff acquired a lien upon the premises hereinbefore described, including the building constructed thereon as aforesaid, for the sum so due him as aforesaid, and for the purpose of securing and perfecting his said lien plaintiff on the 30th day of June, 1948, filed for record in the office of the Recorder for the Anchorage Recording Precinct, Territory of Alaska, a claim containing a true statement of his demand, duly verified by him, after deducting all just credits and offsets, with the name of the owner and reputed owner, and also the person by whom he was employed, and also a description of the property to be charged with the lien sufficient for identification; that the said claim was duly recorded in Book 70 of City Records of said recording precinct on Page 245.

That a true and correct copy of said Claim of Lien is hereunto annexed, marked "Exhibit C" and made a part of this complaint.

That plaintiff paid for filing and recording his said claim the sum of \$2.55.

Fourth Cause of Action

The plaintiff, Lee Runkle, for cause of action alleges:

I.

Plaintiff re-affirms, re-alleges and adopts as a part of his cause of action, all the allegations set forth in paragraphs I, II, III, IV, and VII of the first cause of action of this complaint.

II.

That on or about the 3rd day of May, 1948, the defendant, Russell W. Smith, employed plaintiff to work as a carpenter in the construction of the building hereinbefore mentioned on the premises hereinbefore described at the agreed wage of \$2.66 per hour; that pursuant to said employment during the period beginning May 3rd, 1948, and ending June 10th, 1948, plaintiff performed 276 hours labor as a carpenter on said building and there became due and owing from defendant to the plaintiff for said services the sum of \$734.16; that the defendant has not paid the same nor any part thereof, although frequently requested so to do and the same is now due and owing from defendant to plaintiff.

III.

That by reason of the premises, plaintiff acquired a lien upon the premises hereinabove described, including the building constructed thereon as aforesaid, for the sum so due him as aforesaid and for the purpose of securing and protecting his said lien, plaintiff on the 30th day of June, 1948, filed for record in the office of the Recorder for the Anchorage Recording Precinct, Territory of Alaska, a claim containing a true statement of his demands, duly verified by him, after deducting all just credits and offsets, with the name of the owner and reputed owner, and also the person by whom he was employed, and also a description of the property to be charged with the lien sufficient for identification; that the said claim was duly recorded in Book 70

of City Records of said Recording Precinct on Page 247.

That a true and correct copy of said Claim of Lien is hereunto annexed, marked "Exhibit D" and made a part of this complaint.

That plaintiff paid for filing and recording his said claim the sum of \$2.55.

Fifth Cause of Action

The plaintiff, Arden Bell, for cause of action alleges:

I.

Plaintiff re-affirms, re-alleges and adopts as a part of his cause of action, all the allegation set forth in paragraphs I, II, III, IV, and VII of the first cause of action of this complaint.

II.

That on or about the 3rd day of May, 1948, the defendant, Russell W. Smith, employed plaintiff to work as a carpenter in the construction of the building hereinbefore mentioned on the premises hereinbefore described, at the agreed wage of \$2.66 per hour; that pursuant to said employment, during the period beginning May 3rd, 1948, and ending June 11th, 1948, plaintiff performed 286 hours labor as a carpenter on said building and there became due and owing from defendant to plaintiff for said services the sum of Seven Hundred Sixty and 76/100 Dollars (\$760.76); that the defendant has not paid the same nor any part thereof although

frequently requested so to do, and the same is now due and owing from defendant to plaintiff.

III.

That by reason of the premises plaintiff acquired a lien upon the premises hereinbefore described, including the building constructed thereon as aforesaid, for the sum so due him as aforesaid, and for the purpose of securing and perfecting his said lien plaintiff on the 30th day of June, 1948, filed for record in the office of the Recorder for the Anchorage Recording Precinct, Territory of Alaska, a claim containing a true statement of his demand, duly verified by him, after deducting all just credits and offsets, with the name of the owner and reputed owner, and also the person by whom he was employed, and also a description of the property to be charged with the lien sufficient for identification; that the said claim was duly recorded in Book 70 of City Records of said recording precinct on Page 248.

That a true and correct copy of said Claim of Lien is hereunto annexed, marked "Exhibit E," and made a part of this complaint.

That plaintiff paid for filing and recording his said claim the sum of \$2.55.

Sixth Cause of Action

The plaintiff, William Besser, for cause of action alleges:

I.

Plaintiff re-affirms, re-alleges and adopts as a

part of his cause of action, all the allegations set forth in paragraphs I, II, III, IV, and VII of the first cause of action of this complaint.

II.

That on or about the 18th day of May, 1948, the defendant, Russell W. Smith, employed plaintiff to work as a laborer in the construction of the building hereinbefore mentioned and on the premises hereinbefore described, at the agreed wage of \$2.00 per hour; that pursuant to said employment, during the period beginning May 18th, 1948, and ending May 21st, 1948, plaintiff performed 32 hours labor as a laborer on said building and premises and there became due and owing from defendant to plaintiff for said services the sum of Sixty-four Dollars (\$64.00); that the defendant has not paid the same nor any part thereof although frequently requested so to do, and the same is now due and owing from defendant to plaintiff.

III.

That by reason of the premises plaintiff acquired a lien upon the premises hereinbefore described, including the building constructed thereon as aforesaid, for the sum so due him as aforesaid, and for the purpose of securing and perfecting his said lien plaintiff on the 9th day of July, 1948, filed for record in the office of the Recorder for the Anchorage Recording Precinct, Territory of Alaska, a claim containing a true statement of his demand,

duly verified by him, after deducting all just credits and offsets, with the name of the owner and reputed owner, and also the person by whom he was employed, and also a description of the property to be charged with the lien sufficient for identification; that the said claim was duly recorded in Book 70, of City Records of said recording precinct on Page 267.

That a true and correct copy of said Claim of Lien is hereunto annexed, marked "Exhibit F" and made a part of this Complaint.

That plaintiff paid for filing and recording his said claim the sum of \$2.25.

Wherefore, the plaintiffs pray:

1. That the Court decree that the plaintiffs, and each of them, have liens upon the said premises herein described, including the building thereon, for the sums respectively due them, as alleged in the Complaint, with interest according to law, and costs and disbursements, including attorney's fees, and expense of filing and recording said Claims of Lien, and

2. That all of said real property and the building thereon be sold under order and decree of this Court according to law and the proceeds thereof applied to the payment of the sums found due to plaintiffs, as aforesaid; that the plaintiffs, or any of them, may become purchasers at said sale, and that said plaintiffs may have such other and further

relief as to the Court may seem equitable in the premises.

/s/ GEORGE B. GRIGSBY,
Attorney for Plaintiffs.

United States of America,
Territory of Alaska—ss.

Ray Bullerdick, A. L. Baxley, Edward C. Rankin, Lee Runkle, Arden Bell, and William Besser, being first duly sworn, each for himself, and not one for the other, deposes and says: That he is one of the plaintiffs in the above-entitled action, that he has read the foregoing Complaint and knows the contents thereof and that the same so far as it relates to his separate cause of action is true as he verily believes.

/s/ RAY BULLERDICK,

/s/ A. L. BAXLEY,

/s/ EDWARD C. RANKIN,

/s/ LEE RUNKLE,

/s/ ARDEN BELL.

Subscribed and sworn to before me this 22nd day of July, 1948.

[Seal] /s/ GEORGE B. GRIGSBY,
Notary Public for Alaska.

My commission expires May 19, 1951.

United States of America,
Territory of Alaska—ss.

George B. Gribsby, being first duly sworn, deposes and says: That he is the attorney for the plaintiffs in the above-entitled action, that he has read the foregoing Complaint and knows the contents thereof, and that the same is true as he verily believes insofar as it relates to the separate cause of action of the plaintiff, William Besser; that this Complaint is verified by affiant and not by the said William Besser for the reason that the said William Besser is not present in Anchorage, Alaska, at the time this verification is made, and where the same is made.

/s/ GEORGE B. GRIGSBY.

Subscribed and sworn to before me this 23rd day of July, 1948.

[Seal] /s/ FLORENCE E. CHAPMAN,
Notary Public for Alaska.

My Commission expires: 4/5/52.

EXHIBIT "A"

RAY BULLERDICK,

Claimant,

vs.

AUDREY CUTTING, RUSSELL W. SMITH,
RALPH RUSSELL THOMAS, AND LOT
TWO (2) IN BLOCK THIRTY-SEVEN D
(37 D) OF THE SOUTH ADDITION TO
THE TOWNSITE OF ANCHORAGE.

CLAIM OF LIEN

Notice is hereby given that the above-named claimant, Ray Bullerdick, claims a lien upon the following described premises situate in the City of Anchorage, Alaska, to wit:

Lot Two (2), in Block Thirty-seven D (37 D) of the South Addition to the City of Anchorage according to the official map and plat thereof on file in the office of the recorder for the precinct of Anchorage, Third Division, Territory of Alaska, together with the building thereon situated.

This lien hereby claimed is for labor performed on said premises as a carpenter in the construction of the building now on said premises.

That said services were performed during the period beginning May 15, 1948, and ending June 19, 1948, and consisted of 236 hours labor at the agreed wage of \$2.66 per hour and there is now

due and owing to this claimant for said services, after deducting all just credits and off-sets, the sum of \$627.76. That the owners and reputed owners of said premises are Ralph Russell Thomas and Audrey Cutting.

That this claimant was employed by Russell W. Smith to perform said services at the agreed wage above mentioned.

That the said Russell W. Smith had charge of the construction of said building under a contract with the above-named Audrey Cutting.

Wherefore, this Claimant claims a lien upon afore-described premises and for services above mentioned in the sum of \$627.76.

/s/ RAY BULLERDICK.

Duly verified.

EXHIBIT "B"

A. L. BAXLEY,

Claimant,

vs.

AUDREY CUTTING, RUSSELL W. SMITH,
RALPH RUSSELL THOMAS, AND LOT
TWO (2) IN BLOCK THIRTY-SEVEN D
(37 D) OF THE SOUTH ADDITION TO
THE TOWNSITE OF ANCHORAGE.

CLAIM OF LIEN

Notice is hereby given that the above-named claimant, A. L. Baxley, claims a lien upon the fol-

lowing described premises situate in the City of Anchorage, Alaska, to wit:

Lot two (2) in Block Thirty-seven D (37 D) of the South Addition to the City of Anchorage according to the official map and plat thereof on file in the office of the recorder for the Precinct of Anchorage, Third Division, Territory of Alaska together with the building thereon situated.

This lien is claimed for labor performed on said premises as a carpenter in the construction of the building now on said premises, and for material furnished and used in said construction.

That the said services were performed during the period beginning May 3, 1948, and ending June 10, 1948, and consisted of 268 hours labor at the agreed wage of \$2.66 per hour, or \$728.12.

That this claimant furnished lumber which was used in the construction of said building to the value of \$202.00, during the period above mentioned.

That there is now due and owing to the claimant for said services and said material furnished after deducting just credits and off-sets the sum of \$914.28.

That the owners and reputed owners of said premises are Ralph Russell Thomas and Audrey Cutting.

That this claimant was employed by Russell W. Smith to perform said services at the agreed wage above mentioned and said lumber was furnished at the request of the said Russell W. Smith.

That the said Russell W. Smith had charge of the construction of said building under contract with the above-named Audrey Cutting.

Wherefore, this claimant claims lien upon the afore-described premises for the services rendered and material furnished as aforesaid in the sum of \$914.28.

/s/ A. L. BAXLEY.

Duly verified.

EXHIBIT "C"

EDWARD C. RANKIN,

Claimant,

vs.

AUDREY CUTTING, RUSSELL W. SMITH,
RALPH RUSSELL THOMAS, AND LOT
TWO (2) IN BLOCK THIRTY-SEVEN D
(37 D) OF THE SOUTH ADDITION TO
THE TOWNSITE OF ANCHORAGE.

CLAIM OF LIEN

Notice is hereby given that the above-named claimant, Edward C. Rankin, claims a lien upon the following described premises situate in the City of Anchorage, Alaska, to wit:

Lot Two (2) in Block Thirty-seven D (37 D) of the South Addition to the City of Anchorage according to the official map and plat thereof on file in the office of the recorder for the Precinct of Anchorage, Third Division, Territory

of Alaska, together with the building thereon situated.

This lien hereby claimed is for labor performed on said premises as a carpenter in the construction of the building now on said premises.

That the said services were performed during the period beginning May 17, 1948, and ending June 12, 1948, and consisted of 186 hours labor at the agreed wage of \$2.66 per hour and there is now due and owing to this claimant for said services, after deducting all just credits and off-sets, the sum of \$494.76. That the owners and reputed owners of said premises are Ralph Russell Thomas and Audrey Cutting.

That this claimant was employed by Russell W. Smith to perform said services at the agreed wage above mentioned.

That the said Russell W. Smith had charge of the construction of said building under a contract with the above-named Audrey Cutting.

Wherefore, this claimant claims a lien upon afore-described premises and for services above mentioned in the sum of \$494.76.

/s/ EDWARD RANKIN.

Duly verified.

EXHIBIT "D"

LEE RUNKLE,

Claimant,

vs.

AUDREY CUTTING, RUSSELL W. SMITH,
RALPH RUSSELL THOMAS, AND LOT
TWO (2) IN BLOCK THIRTY-SEVEN D
(37 D) OF THE SOUTH ADDITION TO
THE TOWNSITE OF ANCHORAGE.

CLAIM OF LIEN

Notice is hereby given that the above-named claimant, Lee Runkle, claims a lien upon the following described premises situate in the City of Anchorage, Alaska, to wit:

Lot Two (2) in Block Thirty-seven D (37 D) of the South Addition to the City of Anchorage according to the official map and plat thereof on file in the office of the recorder for the Precinct of Anchorage, Third Division, Territory of Alaska, together with the building thereon situated.

This lien hereby claimed is for labor performed on said premises as a carpenter in the construction of the building now on said premises.

That said services were performed during the period beginning May 3rd, 1948, and ending June 10th, 1948, and consisted of 276 hours labor at the agreed wage of \$2.66 per hour and there is now due and owing to this claimant for said services,

after deducting all just credits and off-sets, the sum of \$734.15. That the owners and reputed owners of said premises are Ralph Russell Thomas and Audrey Cutting.

That this claimant was employed by Russell W. Smith to perform said services at the agreed wage above mentioned.

That the said Russell W. Smith had charge of the construction of said building under a contract with the above-named Audrey Cutting.

Wherefore, this claimant claims a lien upon afore-described premises and for services above mentioned in the sum of \$734.15.

/s/ LEE RUNKLE.

Duly verified.

EXHIBIT "E"

ARDEN BELL,

Claimant,

vs.

AUDREY CUTTING, RUSSELL W. SMITH,
RALPH RUSSELL THOMAS, AND LOT
TWO (2) IN BLOCK THIRTY-SEVEN D
(37 D) OF THE SOUTH ADDITION TO
THE TOWNSITE OF ANCHORAGE.

CLAIM OF LIEN

Notice is hereby given that the above-named claimant, Arden Bell, claims a lien upon the following described premises situate in the City of Anchorage, Alaska, to wit:

Lot Two (2) in Block Thirty-seven D (37 D) of the South Addition to the City of Anchorage according to the official map and plat thereof on file in the office of the recorder for the Precinct of Anchorage, Third Division, Territory of Alaska, together with the building thereon situated.

This lien hereby claimed is for labor performed on said premises as a carpenter in the construction of the building now on said premises.

That said services were performed during the period beginning May 3, 1948, and ending June 11, 1948, and consisted of 286 hours labor at the agreed wage of \$2.66 per hour and there is now due and owing to this claimant for said services, after deducting all just credits and off-sets, the sum of \$760.76. That the owners and reputed owners of said premises are Ralph Russell Thomas and Audrey Cutting.

That this claimant was employed by Russell W. Smith to perform said services at the agreed wage above mentioned.

That the said Russell W. Smith had charge of the construction of said building under a contract with the above-named Audrey Cutting.

Wherefore, this claimant claims a lien upon the afore-described premises and for services above mentioned in the sum of \$760.76.

/s/ ARDEN BELL.

Duly verified.

EXHIBIT "F"

WILLIAM BESSER,

Claimant,

vs.

AUDREY CUTTING, RUSSELL W. SMITH,
RALPH RUSSELL THOMAS, AND LOT
TWO (2) IN BLOCK THIRTY-SEVEN D
(37 D) OF THE SOUTH ADDITION TO
THE TOWNSITE OF ANCHORAGE.

CLAIM OF LIEN

Notice is hereby given that the above-named claimant, William Besser, claims a lien upon the following described premises situate in the City of Anchorage, Alaska, to wit:

Lot Two (2) in Block Thirty-seven D (37 D) of the South Addition to the City of Anchorage according to the official map and plat thereof on file in the office of the recorder for the Precinct of Anchorage, Third Division, Territory of Alaska, together with the building thereon situated.

This lien is claimed for labor performed on said premises as a laborer in the construction of the building now on said premises.

That the said services were performed during the period beginning May 18th, 1948, and ending May 21st, 1948, and consisted of 32 hours labor at the agreed wage of \$2.00 per hour, and there is now due and owing to the claimant for said services

the sum of Sixty-four Dollars (\$64.00) after deducting all just credits and off-sets.

That the owners and reputed owners of said premises are Ralph Russell Thomas and Audrey Cutting.

That this claimant was employed by Russell W. Smith to perform said services at the agreed wage above mentioned; that said Russell W. Smith had charge of the construction of said building under a contract with the said Audrey Cutting.

Wherefore, this claimant claims a lien upon the afore-described premises for the services rendered as aforesaid, in the sum of Sixty-four Dollars (\$64.00).

/s/ WILLIAM BESSER.

Duly verified.

[Endorsed]: Filed July 24, 1948.

[Title of District Court and Cause.]

No. A-5087

APPEARANCE

Comes now Audrey Cutting, the defendant in the above-entitled cause and makes this her appearance in this action.

/s/ AUDREY CUTTING.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed July 31, 1948.

[Title of District Court and Cause.]

No. A-5087

ANSWER

Comes now the defendant, Audrey Cutting, and answering the first cause of action set forth in plaintiffs' complaint, for herself and not for any other defendant, admits and denies as follows:

I.

Admits that she is the owner of that certain real property situate in the City of Anchorage, Alaska, and more particularly described as follows:

Lot Two (2) in Block Thirty-seven D (37 D) of the South Addition to the City of Anchorage, Alaska, according to the official map and plat thereof on file in the office of the Recorder for the Precinct of Anchorage, Third Division, Territory of Alaska,

but denies that either she or anyone authorized by her as agent employed the plaintiff in any capacity whatsoever to perform services on the subject real property or to any building located thereon.

II.

Denies that the plaintiff has acquired a lien against said real property or any building thereon.

III.

Denies that the sum alleged in paragraph V of plaintiffs' first cause of action, i.e., \$627.76, is now

due and owing from the defendant to the plaintiff.

Answer to Second Cause of Action:

Comes now the defendant, Audrey Cutting, and answering the second cause of action set forth in plaintiff's complaint, for herself and not for any other defendant, admits and denies as follows:

I.

Defendant reaffirms, realleges and adopts as part of her answer to the second cause of action all of the allegations set forth in paragraphs I, II, and III of her answer to the first cause of action.

II.

Denies that the sum alleged in paragraph II of the second cause of action, i.e., \$914.88, is now due and owing from the defendant to the plaintiff.

Answer to Third Cause of Action:

Comes now the defendant, Audrey Cutting, and answering the third cause of action set forth in plaintiffs' complaint, for herself and not for any other defendant, admits and denies as follows:

I.

Defendant reaffirms, realleges, and adopts as part of her answer to the third cause of action all of the allegation set forth in paragraphs I, II, and III of her answer to plaintiffs' first cause of action.

II.

Denies that the sum alleged in paragraph II, i.e., \$494.76, or any other sum, is now due and owing from the defendant to the plaintiff.

Answer to Fourth Cause of Action :

Comes now the defendant, Audrey Cutting, and answering the fourth cause of action set forth in plaintiffs' complaint, for herself and not for any other defendant, admits and denies as follows:

I.

Defendant reaffirms, realleges and adopts as part of her answer to plaintiffs' fourth cause of action all of the allegations set forth in paragraphs I, II, and III of her answer to plaintiffs' first cause of action.

II.

Denies that the sum alleged in paragraph II, i.e., \$734.16, or any other sum, is now due and owing from defendant to the plaintiff.

Answer to Fifth Cause of Action :

Comes now the defendant, Audrey Cutting, and answering the fifth cause of action set forth in plaintiffs' complaint, for herself and not for any other defendant, admits and denies as follows:

I.

Defendant reaffirms, realleges, and adopts as part of her answer to plaintiffs' fifth cause of action all

of the allegations set forth in paragraphs I, II, and III of her answer to the first cause of action.

II.

Denies that the sum of \$760.76 as alleged in paragraph II of the fifth cause of action, or any other sum, is now due and owing from the defendant to the plaintiff.

Answer to Sixth Cause of Action:

Comes now the defendant, Audrey Cutting, and answering the sixth cause of action set forth in plaintiffs' complaint, for herself and not for any other defendant, admits and denies as follows:

I.

Defendant reaffirms, realleges, and adopts as part of her answer to plaintiff's sixth cause of action all of the allegations set forth in paragraphs I, II, and III of her answer to plaintiff's first cause of action.

II.

Denies that the sum of \$64.00 as alleged in paragraph II of the sixth cause of action of the complaint, or any other sum, is now due and owing from the defendant to the plaintiff.

Wherefore, defendant, having fully answered the complaint filed by plaintiffs, prays this Honorable Court to dismiss the same with costs assessed to the plaintiffs.

/s/ HAROLD J. BUTCHER,
Attorney for Defendant.

United States of America,
Territory of Alaska—ss.

Audrey Cutting, being first duly sworn, deposes and says: That she is one of the defendants named in the above-entitled action; that she has read the foregoing answer, knows the contents thereof, and that the same so far as it relates to her separate answer, is true as she verily believes.

/s/ AUDREY CUTTING.

Subscribed and sworn to before me this 7th day of September, 1948.

/s/ HAROLD J. BUTCHER,
Notary Public in and for
Alaska.

My Commission expires April 23, 1949.

Receipt of copy acknowledged.

[Endorsed]: Filed September 9, 1948.

[Title of District Court and Cause.]

No. A-5087

ORDER ALLOWING INTERVENTION

The complaint of Herald E. Stringer having been presented to me, and leave asked to file the same, as his complaint of intervention herein, and it appearing that good cause exists therefore, it is ordered that leave be granted to file the same, and that said

Herald E. Stringer be permitted to intervene in said action.

Dated this 9th day of November, 1948, at Anchorage, Alaska.

/s/ ANTHONY J. DIMOND,
District Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed and entered November 9, 1948.

In the District Court for the Territory of Alaska
Third Division

No. A-5087

RAY BULLERDICK, A. L. BAXLEY, EDWARD
C. RANKIN, LEE RUNKEL, ARDEN BELL,
and WILLIAM BESSER,

Plaintiffs,

vs.

RALPH R. THOMAS, AUDREY CUTTING, and
RUSSEL W. SMITH,

Defendants.

HERALD E. STRINGER, Trustee for the Estate
of Russel W. Smith, Bankrupt,

Intervenor.

COMPLAINT IN INTERVENTION

Comes now Herald E. Stringer, trustee of the estate of Russel W. Smith, bankrupt, one of the

defendants in the above-entitled action, and files his complaint in this action, leave of court being first had, and alleges as follows:

(1) On the 16th day of July, 1948, Russel W. Smith, one of the defendants in this action, filed his voluntary petition in Bankruptcy in this Court and on said day was duly adjudged a bankrupt by said Court according to the provisions of the acts of Congress relating to bankruptcy. On the 16th day of July, 1948, the matter of Russel W. Smith, in bankruptcy, was referred by this Court to Stanley J. McCutcheon, Referee in Bankruptcy of this Court; and on the 12th day of August, 1948, at the first meeting of creditors of said bankrupt, Herald E. Stringer, intervenor herein, was duly appointed trustee of the estate of said bankrupt, and on the same day this appointment was approved by the said Referee; and thereafter Herald E. Stringer, by notice of acceptance in writing filed in said matter, accepted this appointment as trustee. That because of the above premises, Herald E. Stringer, intervenor herein, has an interest in the matter in litigation.

(2) That on the 30th day of April, 1948, Russel W. Smith and Audrey Cutting, defendants in this action, entered into a written contract wherein it was agreed between these parties that Russel W. Smith would erect a building on Lot Two (2) in Block Thirty-seven "D" (37-D) of the South Addition to the City of Anchorage, furnishing materials and supplies to be used in the construction thereof,

and the said Audrey Cutting, in consideration therefor, agreed to pay the said Russel W. Smith for labor, materials, and supplies in the amount of \$10,500.00. That immediately thereafter, Russel W. Smith entered into the performance of said contract and furnished labor, materials, and supplies in the reasonable and agreed value of \$10,500.00, for the benefit of the above-described property, all of which work was done and material and supplies furnished with the knowledge and consent of the owner of said premises and property. That because of the foregoing, there became due and owing to the said Russel W. Smith the sum of \$10,500.00; that the said Audrey Cutting has not paid the sum so due, as aforesaid, to the said Russel W. Smith, or any part thereof, although frequently requested to do so; that because of the premises in paragraph (1) of this complaint in intervention this amount is now due and owing from the said Audrey Cutting to the said Herald E. Stringer, trustee of the estate of the said Russel W. Smith, bankrupt.

(3) That by reason of the premises in paragraph (2) of this complaint in intervention the said Russel W. Smith acquired a lien upon the premises hereinbefore described for the sum due him, as aforesaid, and for the purpose of securing and perfecting his said lien, the said Russel W. Smith on the 12th day of September, 1948, filed for record in the office of the Recorder for the Anchorage Precinct, Territory of Alaska, a claim containing a true statement of his demand, duly verified, after deduct-

ing all just credits and offsets, with the name of the person to whom he had furnished the labor, materials, and supplies, and also a description of the property to be charged with said lien sufficiently identified; that said claim of lien was duly recorded in Book 17, Page 113; that a true and correct copy of said claim of lien is hereunto annexed, marked "Exhibit A" and made a part of this complaint. That the said Russel W. Smith paid for the preparing, filing and recording said claim of lien the sum of \$17.85. That by reason of the premises contained in paragraph (1) of this complaint in intervention, this said claim of lien is part of the estate of the said Russel W. Smith, bankrupt, and has thereby become vested in the trustee of said estate, Herald E. Stringer, intervenor herein.

(4) That the sum of Two Thousand (\$2,000.00) Dollars is a reasonable amount to be allowed by the Court as the fee for the attorney for intervenor in this action.

Wherefore, by reason of the premises foregoing, intervenor prays:

1. That intervenor have and recover from defendant, Audrey Cutting, the sum of \$10,500.00, together with interest at the rate of 6 per cent per annum from the 19th day of June, 1948; together with \$17.85 for the preparation and recording of the claim of lien; together with \$2,000.00 attorney fees.

2. That intervenor have a lien upon said premises, including the building thereon; that all of said real property and the building thereon be sold under order and decree of this Court according to law, and that the proceeds thereof, after satisfaction of claims arising from any valid prior liens, be applied to the payment of the sum found due to intervenor, as aforesaid.

3. That intervenor have such other and further relief as to the Court may seem equitable in the premises.

/s/ HERALD E. STRINGER,
Intervenor.

Duly verified.

EXHIBIT "A"

RUSSEL W. SMITH,

Claimant,

vs.

AUDREY CUTTING.

CLAIM OF LIEN

Notice is hereby given that Russel W. Smith of Anchorage, Alaska, claims a lien upon the following described land, building, structure and property:

Lot Two (2) in Block Thirty-seven D (37-D) of the South Addition to the City of Anchorage, Alaska, according to the official map and plat thereof now of record in the office of the United States Commissioner and ex-officio recorder for

the said Anchorage Precinct; together with the frame building situated thereon; and together with the appurtenances.

That the name of the owner of said land and property and the name of the reputed owner is Audrey Cutting.

That said lien is claimed by the above-named claimant under and by virtue of a contract made and entered into between said claimant and Audrey Cutting for constructing a one-story residence upon the lot above mentioned and described, wherein and whereby it was agreed that the claimant was to erect the building above indicated, and to furnish the materials to be used in the building and construction thereof, and to be paid for the labor, materials and supplies in the amount of Ten Thousand and Five Hundred Dollars (\$10,500.00).

That immediately thereafter and on the 20th day of April, 1948, the claimant entered into the performance of the said contract and furnished labor, materials and supplies of the reasonable and agreed value of Ten Thousand and Five Hundred Dollars (\$10,500.00) for the benefit of the above-described property, all of which work was done and material and supplies furnished with the knowledge and consent of the owner of said premises and property. That the last day on which this claimant so worked and labored and so furnished material and supplies as aforesaid under said contract was June 19, 1948, and that ninety (90) days have not elapsed since claimant ceased to work and labor and furnish materials and supplies under said contract.

That there is now due, owing and unpaid to the claimant from the said Audrey Cutting after deducting all just credits and offsets, the sum of Ten Thousand and Five Hundred Dollars (\$10,500.00), together with interest at six per cent (6%) per annum from June 19, 1948.

Wherefore, claimant claims a lien on said above-described land, building, structure and property in the sum of Ten Thousand and Five Hundred Dollars (\$10,500.00), together with interest at six per cent (6%) per annum from June 19, 1948, and for a further sum of Fifteen (\$15.00) Dollars for the preparation of this statement of lien; for the recording fees hereof; and for a further reasonable attorney's fee to be fixed by the Court for the foreclosure of this lien claim.

/s/ RUSSEL W. SMITH,
Claimant.

Duly verified.

Receipt of Copy acknowledged.

[Endorsed]: Filed November 9, 1948.

[Title of District Court and Cause.]

No. A-5087

ANSWER TO COMPLAINT
IN INTERVENTION

Comes now Audrey Cutting, one of the defendants above named, and appearing for herself and not

otherwise and in answer to the complaint in intervention of Herald E. Stringer, trustee for the estate of Russel W. Smith, bankrupt, admits and denies as follows:

I.

The defendant, Audrey Cutting, herein answering admits that she entered into a contract with the plaintiff in intervention, the said Russel W. Smith, for the construction of a residence for the total sum of Ten Thousand Five Hundred Dollars (\$10,500.00), but denies that said contract has been completed in accordance with its terms and to the satisfaction of the defendant.

II.

The defendant, answering denies that the sum of Ten Thousand Five Hundred Dollars (\$10,500.00) is now due and owing to the intervenor, and denies all other allegations contained in said complaint in intervention inconsistent with said contract and the performance thereunder.

Wherefore, defendant prays that the complaint of the trustee for the estate of Russel W. Smith, bankrupt, be dismissed with costs to the defendant.

/s/ HAROLD J. BUTCHER,
Attorney for Defendant.

Duly verified.

[Endorsed]: Filed December 30, 1948.

In the District Court for the Territory of Alaska
Third Judicial Division

No. A-5087

RAY BULLERDICK, A. L. BAXLEY, EDWARD
C. RANKIN, LEE RUNKEL, ARDEN BELL,
and WILLIAM BESSER,

Plaintiffs,

vs.

RALPH R. THOMAS, AUDREY CUTTING, and
RUSSEL W. SMITH,

Defendants.

No. A-5088

TED VAN THIEL, PATSY VAN THIEL, E. P.
CARTEE, JEAN CARTEE, R. C. REEVE,
and JANICE REEVE, Co-partners Under the
Firm Name and Style of KENNEDY HARD-
WARE, and GENE BRADY, Co-partners Un-
der the Firm Name and Style of BRADY'S
FLOOR COVERING, and E. V. FRITTS,
WILLIAM J. WALLACE and EINER G.
NELSON, Co-partners Under the Firm Name
and Style of ALASKA PAINT & GLASS CO.,

and CITY ELECTRIC OF ANCHORAGE,
INC., a Corporation,

Plaintiffs,

vs.

RALPH R. THOMAS, AUDREY CUTTING and
RUSSELL W. SMITH,

Defendants.

Nos. A-5087 and A-5088

ARTHUR F. WALDRON and JOSEPH A. CO-
LUMBUS, Co-partners Doing Business Under
the Firm Name and Style of ANCHORAGE
SAND & GRAVEL COMPANY,

Plaintiffs in Intervention,

vs.

RAY BULLERDICK, A. L. BAXLEY, EDWARD
C. RANKIN, LEE RUNKLE, ARDEN BELL
and WILLIAM BESSER, TED VAN THIEL,
PATSY VAN THIEL, E. P. CARTEE, JEAN
CARTEE, R. C. REEVE, and JANICE
REEVE, Co-partners Under the Firm Name
and Style of KENNEDY HARDWARE, and
E. V. FRITTS, WILLIAM J. WALLACE and
EINER G. NELSON, Co-partners Under the
Firm Name and Style of ALASKA PAINT &
GLASS CO., and CITY ELECTRIC OF AN-
CHORAGE, INC., a Corporation, RALPH R.
THOMAS, AUDREY CUTTING and RUS-
SELL W. SMITH; SYLVIA A. HENDER-

SON, a Minor; KETCHIKAN SPRUCE MILLS, INC., a Corporation, ALASKAN PLUMBING & HEATING CO., a Corporation, KEN HINCHEY CO., RAY WOLFE, ESTHER WOLFE, ROBERT WOLFE, MARGARET WOLFE and ED WILHOLTH, Co-partners Doing Business Under the Firm Name and Style of WOLFE HARDWARE & FURNITURE,

Defendants in Intervention.

ANSWER TO COMPLAINT
IN INTERVENTION

Comes now the defendant, Audrey Cutting, and answering the Complaint in Intervention of the plaintiffs, admits and denies as follows:

I.

Denies all of the allegations in said complaint contained which are inconsistent or vary from the terms of that certain contract entered into with Russell W. Smith, one of the defendants, an independent contractor, and the execution of which contract is hereby admitted.

Wherefore, defendant prays that plaintiffs take nothing by their complaint and that the same be dismissed with costs.

/s/ HAROLD J. BUTCHER,
Attorney for Defendant.

Duly verified.

[Endorsed]: Filed December 30, 1948.

[Title of District Court and Causes.]

No. A-5087, No. A-5088.

Nos. A-5087 and A-5088.

No. A-5088.

No. A-5087.

No. A-5088.

STIPULATION

It is hereby stipulated by and between the parties who have appeared in the above and foregoing entitled actions, by and through their respective attorneys, that said actions, namely, cases numbered A-5087 and A-5088 be consolidated for trial, and that all the material allegations set forth in each of the respective pleadings in said actions, including complaints, complaints in intervention, affirmative answers and counter-claims, be deemed denied by all other parties than the respective pleaders, and said cases be deemed at issue in all respects and ready for trial.

It is further stipulated that A. L. Baxley, plaintiff in Case No. 5087, would testify if present at the trial, to the truth of the allegations set forth in Paragraphs II and III of the second cause of action of the complaint of Ray Bullerdick, et al, Case No. 5087.

/s/ GEORGE B. GRIGSBY,

Attorney for Ray Bullerdick, et al., Case No. A-5087, Brady's Floor Covering, Case No. A-5088, Alaska Paint and Glass Co., Case No. A-5088,

and City Electric of Anchorage, Inc., Case No. A-5088, and Kennedy Hardware, Case No. A-5088.

/s/ J. L. McCARREY, JR.,
Attorney for Anchorage Sand and Gravel Company,
Cases Nos. A-5087 and A-5088.

/s/WENDELL P. KAY,
Attorney for Ketchikan Spruce Mills, Inc., a Corporation, and Alaskan Plumbing and Heating Company, Inc., a Corporation, Case No. A-5088.

/s/ JOHN H. DIMOND,
Attorney for Trustee for the Estate of Russell W. Smith, Bankrupt, Case No. A-5087.

/s/ HAROLD J. BUTCHER,
Attorney for Audrey Cutting and Sylvia Henderson,
Cases Nos. A-5087 and A-5088.

/s/ EDWARD V. DAVIS,
Attorney for Wolfe Hardware and Furniture, Cases
Nos. A-5087 and A-5088.

[Endorsed]: Filed January 13, 1949.

No. A-5087 and No. A-5088

MINUTE ORDER DENYING MOTION

Now at this time upon motion of George B. Grigsby, counsel for plaintiffs in cause No. A-5087 entitled Ray Bullerdick, A. L. Baxley, Edward C.

Rankin, Lee Runkle, Arden Bell and William Besser, plaintiffs, versus Ralph R. Thomas, Audrey Cutting and Russell W. Smith, defendants and cause No. A-5088, entitled Ted Van Thiel, et al., plaintiffs, versus E. V. Fritts, et al., that above-entitled causes be set for trial at 10:00 o'clock a.m. of Monday, January 31, 1949, and with Harold H. Butcher, counsel for defendant Cutting objecting,

It Is Hereby Ordered that the above motion be, and it is hereby, denied without prejudice.

Entered January 25, 1949.

[Title of District Court and Cause.]

No. 5087

ANSWER AND CROSS-COMPLAINT

Come now Ken Hinchey and Nadine Hinchey, doing business as Ken Hinchey Company, one of the above-named defendants, in answer to the first cause of action of the complaint in intervention of the intervening plaintiffs, and admits, denies and alleges as follows:

I.

Except as hereinafter set forth, defendant Ken Hinchey Company admits the allegations of the first, second, third and fourth paragraphs of the first cause of action of the complaint in intervention filed by Arthur F. Waldron and Joseph A. Columbus, co-partners, doing business under the firm name and style of Anchorage Sand & Gravel Company.

II.

Defendant Ken Hinchey Company has no knowledge or information sufficient to form a belief concerning the allegations of the fifth, sixth and seventh paragraphs of the first cause of action of the complaint in intervention above described, and for that reason denies each and all the allegations of such paragraph.

III.

Defendant Ken Hinchey Company has no knowledge or information sufficient to form a belief concerning the allegations of the eighth paragraph of the first cause of action of the complaint in intervention above described, and for that reason denies each and all the allegations of such paragraph except as to the allegation concerning the filing and recording of the lien claim mentioned in said eighth paragraph at book 70, of Precinct Records, on page 358 thereof, which allegation is admitted by the defendant, Ken Hinchey Company.

IV.

Ken Hinchey Company has no knowledge or information concerning the allegations of the ninth and tenth paragraphs of the first cause of action of the complaint in intervention filed by Arthur F. Waldron and Joseph A. Columbus, co-partners doing business under the firm name and style of Anchorage Sand & Gravel Company and for that reason denies each and all of such allegations.

V.

Ken Hinchey Company denies each and all the

allegations of the 11th paragraph of the first cause of action of the complaint in intervention filed by Arthur F. Waldron and Joseph A. Columbus, co-partners doing business under the firm name and style of Anchorage Sand and Gravel Company.

By way of answer to the second cause of action of the complaint in intervention of Arthur F. Waldron and Joseph A. Columbus, co-partners doing business under the firm name and style of Anchorage Sand & Gravel Company, Ken Hinchey Company, admits, denies and alleges as follows:

I.

Ken Hinchey Company admits the allegations of the first paragraph of the second cause of action of the complaint in intervention except the allegations concerning an alleged assignment to the plaintiff in intervention from the co-partners doing business as Concrete products Company and as to such allegations, Ken Hinchey Company has no knowledge or information sufficient to form a belief and for that reason denies the same.

II.

Except as hereinafter set forth, Ken Hinchey Company admits the allegations of the second, third, and fourth paragraphs of the second cause of action of the complaint in intervention.

III.

Ken Hinchey Company has no knowledge or information concerning the allegations of the fifth,

sixth and seventh paragraphs of the second cause of action of the complaint in intervention, and for that reason denies each and all the allegations thereof.

IV.

Ken Hinchey Company denies the allegations of the eighth paragraph of the second cause of action of the complaint in intervention except the allegations concerning the filing and recording of the claim of lien mentioned in such paragraph, which are admitted by the defendant, Ken Hinchey Company.

V.

Ken Hinchey Company has no knowledge or information concerning the allegations of the ninth or tenth paragraphs of the second cause of action of the complaint in intervention and for that reason denies each and all of such allegations.

VI.

Ken Hinchey Company denies all the allegations of the 11th paragraph of the second cause of action of the complaint in intervention.

As a further answer to the complaint in intervention, and by way of cross-complaint thereto, answering defendant, Ken Hinchey Company, alleges as follows:

I.

That at all times concerned in this action Ken Hinchey Company has been the trade name used by Ken Hinchey and Nadine Hinchey, co-partners

doing business at Anchorage, Alaska, under that name.

II.

That defendant Ralph R. Thomas is, and at all times mentioned in this answer was, one and the same person as Ralph Russell Thomas.

III.

Sylvia A. Henderson, as the defendant Ken Hinchey Company believes and so alleges the fact to be, is and at all times mentioned in this action has been, a minor.

IV.

That Ted Van Thiel, Patsy Van Thiel, E. P. Cartee, Jean Cartee, R. C. Reeve and Janice Reeve, a co-partnership doing business as Kennedy Hardware, and Gene Brady, are and at all times mentioned herein have been, co-partners doing business at Anchorage, Alaska, under the firm name and style of Brady's Floor Covering.

V.

That E. V. Pritts, William J. Wallace and Einer G. Nelson are and at all times concerned in this action have been co-partners doing business at Anchorage, Alaska, under the firm name and style of Alaska Paint and Glass Company.

VI.

That the City Electric of Anchorage, Inc., is and at all times concerned in this action has been a corporation organized and existing under and by virtue of the laws of the Territory of Alaska.

VII.

That Arthur F. Waldron and Joseph A. Columbus, are and at all times concerned in this action have been, co-partners doing business at Anchorage, Alaska, under the firm name and style of Anchorage Sand & Gravel Company.

VIII.

That Arthur F. Waldron, Roger N. Waldron and Jack Harrison are, and at all times mentioned in this answer have been co-partners doing business at Anchorage, Alaska, under the firm name and style of Cinder Concrete Products Company.

IX.

That Ketchikan Spruce Mills, Inc., is, and at all times mentioned in this answer has been, a corporation.

X.

That Alaskan Plumbing and Heating Company, Inc., is and at all times mentioned in this answer has been, a corporation.

XI.

That at all times concerned in this action Ray Wolfe, Esther Wolfe, Robert Wolfe, Margaret Wolfe and Ed Wilhorth, are and at all times mentioned in this answer have been, co-partners doing business at Anchorage, Alaska, under the firm name and style of Wolfe Hardware and Furniture.

XII.

That at the time Ken Hinchey Company furnished labor and materials as hereinafter set forth, the defendant, Ralph Russell Thomas, was the record owner of certain real property located in the City of Anchorage, Alaska, and more particularly described as follows:

Lot 2, Block Thirty-seven "D" (37-D) of the South Addition to the townsite of Anchorage, Alaska, according to the map and plat of the Welch Subdivision, which map and plat is on file and of record in the office of the United States Commissioner and ex-officio Recorder for Anchorage Precinct at Anchorage, Alaska, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and including certain buildings constructed thereon, as hereinafter more fully set forth.

XIII.

That since Ken Hinchey Company ceased to furnish materials for construction on the above-described property, a Deed has been recorded at Book seventy-one (71) of the City Records of the Anchorage Recording Precinct, at page twenty-one (21) thereof, which purports to have been executed on the 30th day of November, 1946, and which purports to convey the above-described property from Ralph R. Thomas to Sylvia A. Henderson, and that Sylvia A. Henderson is now the record

owner of such property and that such property is the subject of this action.

XIV.

That during all times concerned in this action, Audrey Cutting has been the purported owner of the property which is the subject of this action and that defendant Audrey Cutting has or may have some interest in such property but that the nature of such interest if in fact Audrey Cutting has any interest in the property, is unknown to Ken Hinchey Company.

XV.

That prior to the date upon which Ken Hinchey Company furnished any materials or labor for the construction of the building upon the real property above described, defendants Sylvia A. Henderson or Audrey Cutting or Ralph Russell Thomas, also known as Ralph R. Thomas, or one or more or all of such parties, entered into a contract with the defendant Russell W. Smith, the date and the exact terms of such contract being unknown to the answering defendants. That by the terms of such contract, the defendant Russell W. Smith was engaged as general contractor for the purpose of constructing a dwelling house for the defendants Audrey Cutting or Sylvia A. Henderson or Ralph R. Thomas, also known as Ralph Russell Thomas, or one or more or all of them, upon the real property and premises above described and which is the subject of this action.

XVI.

That on or about the 23rd day of April, 1948, Ken Hinchey Company was engaged by the defendant Russell W. Smith, as general contractor, to furnish certain goods, wares, merchandise and to perform certain labor in connection with the construction of the building upon the above-described real property and that between the 23rd day of April, 1948, and the 25th day of May, 1948, Ken Hinchey Company, at the special instance and request of Russell W. Smith, furnished certain goods, wares and merchandise and performed certain labor in connection with the construction of said building, and that said goods, wares and merchandise were actually used and expended upon, and such labor was actually performed in, the construction of such building.

XVII.

That the goods, wares, merchandise, and labor, furnished and performed by Ken Hinchey Company in the construction of the building upon the property above described, were of the reasonable value of \$680.49 in lawful money of the United States of America.

XVIII.

That no part of the said sum of \$680.49 has been paid, and that there is now due, owing and unpaid to Ken Hinchey Company from the defendant Russell W. Smith and the defendants Audrey Cutting, Sylvia A. Henderson and Ralph Russell Thomas, also known as Ralph R. Thomas, the sum of \$680.48 after deducting all just credits and offsets.

XIX.

That demand has frequently been made by Ken Hinchey Company for payment of the amount due in the sum of \$680.49 as above set forth, but that no payment thereon has been made and that there is now due and owing to Ken Hinchey Company by reason of such goods, wares, merchandise and labor furnished in the construction of the building upon the real estate above described, the sum of \$680.49, together with interest on that sum at the rate of 6% per annum from the 25th day of May, 1948, until paid.

XX.

That the 25th day of May, 1948, was the last day upon which Ken Hinchey Company furnished any materials, or labor for the construction of the building upon the above-described real property.

XXI.

That on the 10th day of August, 1948, and within 90 days after the last date upon which Ken Hinchey Company so furnished any goods, wares and merchandise and performed labor as aforesaid, the said Ken Hinchey Company for the purpose of maintaining, securing and protecting its lien upon the real property above described, duly filed for record and caused to be recorded in the office of the United States Commissioner and Ex-officio Recorder for the Anchorage Recording Precinct, at Anchorage, Alaska, its statement of claim of lien upon and against the above-described premises, and property,

which said lien was duly recorded in Book 69, of the City Records of such Precinct, at page 230. That a copy of such lien is hereto attached as Exhibit and by reference is made a part hereof to the same extent as though set out in full.

XXII.

That six months have not elapsed since the date of recording the statement of claim of lien, of Ken Hinchey Company as aforesaid.

XXIII.

That such claim of lien so recorded was and is duly verified by the oath of Ken Hinchey, one of the partners of the partnership doing business as Ken Hinchey Company, and contains a true statement of the demands and the amount thereof due to the said Ken Hinchey Company after deducting all just credits and offsets, with the name of the person who engaged the said Ken Hinchey Company to furnish the goods, wares and merchandise and materials or labor as aforesaid. That such statement contains a description of the property on which the lien is claimed, sufficient for identification, being the same property heretofore described herein, and sets forth the name of the owner or reputed owner thereof and the dates when Ken Hinchey Company furnished the materials, goods, wares, merchandise and labor, including the last day thereof.

XXIV.

That the plaintiff in this action and each of the defendants therein, have or claim to have some

right, interest, claim, demand or lien in, to or upon the premises and property above described, but that any such right, title, interest, claim, demand or lien is entirely secondary, subordinate and inferior to the lien of the said Ken Hinchey Company as herein set forth.

XXV.

That the sum of \$13.60 is a reasonable sum to be allowed the answering defendant for the preparation and recording of its statement of lien.

XXVI.

That the sum of \$150.00 is a reasonable sum to be allowed to the answering defendant for and as its attorney's fee in this action.

Wherefore, having fully answered the complaint in intervention filed by Arthur F. Waldron and Joseph A. Columbus, co-partners doing business under the firm name and style of Anchorage Sand & Gravel Company, the defendant Ken Hinchey Company prays for judgment as follows:

1. That the plaintiff's in intervention may take nothing by their complaint in intervention.
2. That the claim of lien filed by the defendant Ken Hinchey Company may be declared to be a first, prior and paramount lien against the real property which is the subject of this action and more particularly described as:

Lot 2, Block Thirty-seven "D" (37-D) of the South Addition to the townsite of Anchor-

age, Alaska, according to the map and plat of the Welch Subdivision which map and plat is on file and of record in the office of the United States Commissioner and Ex-officio Recorder for Anchorage Precinct at Anchorage, Alaska, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and including particularly, that certain dwelling house located thereon.

3. That plaintiff's lien against the premises which are the subject of this action and above described may be foreclosed and that such property may be sold in the manner provided by law and according to the practice of this Court, and from the proceeds of such sale the lien of the defendant Ken Hinchey Company may be paid, together with the costs of preparation and recording of such lien in the amount of \$13.60, together with plaintiff's costs and disbursements in this action incurred, and attorney's fee to be set by the Court.

4. For such other and further relief as to the Court may seem meet and equitable in the premises.

DAVIS & RENFREW,

Attorneys for the Defendant,
Ken Hinchey Company.

By **EDWARD V. DAVIS.**

Duly verified.

Service acknowledged.

EXHIBIT "K-W"

KEN HINCHEY CO.,

Claimant,

vs.

RALPH RUSSELL THOMAS, RUSSELL W.
SMITH, and AUDREY CUTTING,

Defendant.

CLAIM OF LIEN

Know All Men by These Presents: That Ken Hinchey Co., by virtue of a certain contract heretofore entered into between it and Russell W. Smith, performed labor and furnished materials toward the construction of a certain building in the excavation of a basement and construction of a cesspool, upon certain real property standing of record in the name of Ralph Russell Thomas; said real property, and the property upon which claimant claims a lien hereunder, being more particularly described as:

Lot Two (2) in Block Thirty-seven D (37 D) of the South Addition to the Townsite of Anchorage, Alaska, according to the map and plat of the Welch subdivision which map and plat is on file and of record in the office of the United States Commissioner and Ex-Officio Recorder for Anchorage Precinct, at Anchorage, Alaska.

Together with, all and singular, the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining.

That the name of the owner or reputed owner, of the real property hereinabove described is Ralph Russell Thomas; that Audrey Cutting claims some right, title or interest therein; that the residence building now on said premises was constructed by the above-named Russell W. Smith under contract with the said Audrey Cutting, with the full knowledge and consent of the said Ralph Russell Thomas, and was under construction during all the times hereinafter mentioned. That as claimants are informed and believe and so allege the fact to be, there are, or may be other persons or parties claiming some right, title or interest to the hereinbefore described property but the name of such persons or parties are unknown to claimant.

That the reasonable price for such materials so furnished and labor so performed by the claimant was and is the sum of Six hundred eight and 49/100 Dollars (\$680.49), in lawful money of the United States of America; that no part of such sum has been paid; and that there is now due, owing and unpaid from the above-named defendants to the claimant the sum of Six Hundred Eighty and 49/100 Dollars, after deducting all just credits and offsets, and that claimant claims a lien upon the above-described real property and buildings in that sum.

That the materials so furnished, and labor so performed, by claimant was furnished and performed at the special instance and request of Russell W. Smith, and that such materials and labor

were actually used and expended upon the property above described in the excavation of a basement, cesspool and ditch, and in the construction of a cesspool, for the use of, and in connection with, the construction of a building upon the above-described property.

That said materials and labor were so expended upon the above-described property between the 23rd day of April, 1948, and the 25th day of May, 1948, and that claimant ceased to furnish materials and labor for use upon said building and property on the 25th day of May, 1948, and that the expenditure thereof was completed on such date, and within ninety days prior to the filing of this Claim of Lien.

KEN HINCHEY CO.,

By /s/ KEN HINCHEY.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed February 8, 1949.

[Title of District Court and Causes.]

No. A-5087.

No. A-5088.

Nos. A-5087 and A-5088.

SECOND AMENDED ANSWER

Come now the defendants, Audrey Cutting and Sylvia A. Henderson, and for their second amended answer, admit, deny, and allege as follows:

I.

Admit all the allegations of all the paragraphs of the original complaints and the complaints in intervention admitted in the original and amended answers.

II.

Denies all the allegations of all the paragraphs of the original complaints and the complaints in intervention denied in the original and amended answers.

Affirmative Defense

I.

That the defendant, Audrey Cutting, entered into a contract with a licensed contractor, one Russell W. Smith, under the terms of which said Russell W. Smith agreed to construct the residence for the sum of Ninety-eight Hundred Dollars (\$9,800.00) and that said contractor personally made, on his own behalf as an independent contractor, all of the contracts for labor and/or materials set forth in the complaint and that the de-

defendant, Audrey Cutting, duly posted lien non-liability notices on the premises and that said defendant Audrey Cutting is neither guardian nor agent for the defendant, Sylvia Henderson.

II.

That the defendant, Sylvia A. Henderson, is a minor child under the age of 18 years and is the sole owner of lot No. 2 of block 37-D as aforementioned and that said defendant, Sylvia A. Henderson, caused to be posted on said lot on or about the 1st day of May, 1948, a notice of non-responsibility for liens.

Wherefore, defendant prays that plaintiffs take nothing by their complaint and intervention and that they be hence dismissed with costs.

/s/ HAROLD J. BUTCHER,
Attorney for Defendant.

Duly verified.

[Endorsed]: Filed February 14, 1949.

No. A-5087 and No. A-5088.

MINUTE ORDER GRANTING LEAVE TO AMEND ANSWER

Now at this time upon motion of Harold J. Butcher, counsel for defendants,

It Is Ordered that leave be, and it is hereby granted to amend defendants answer in cause No.

A-5087, entitled Ray Bullerdick, et al, plaintiffs, versus Ralph R. Thomas, et al, defendants, and cause No. A-5088, entitled Ted Van Thiel, et al, plaintiffs, versus Ralph R. Thomas, et al, defendants, to allow defendant Audrey Cutting to deny that she is the owner of the subject property in the above-entitled causes.

Entered February 16, 1949.

[Title of District Court and Causes.]

In Case No. A-5087

In Case No. A-5088

In Nos. A-5087 and A-5088

REPLY TO SECOND AMENDED ANSWER OF
DEFENDANTS, AUDREY CUTTING AND
SYLVIA A. HENDERSON.

Come now Ray Wolfe, Esther Wolfe, Robert Wolfe, Margaret Wolfe, and Ed Wilholth, co-partners doing business under the firm name and style of Wolfe Hardware & Furniture, one of the above-named defendants, in reply to defendants' second Amended Answer and admit, deny and allege as follows:

I.

Deny each and every allegation set forth in paragraph I of affirmative defense of defendants' second Amended Answer except the execution of a contract between Audrey Cutting and one Russell Smith, under the terms of which said Russell W. Smith

agreed to construct the residence as set forth in the said contract.

II.

Admit that the defendant, Sylvia A. Henderson, is a minor child under the age of eighteen years as set forth in paragraph II of the affirmative defense of defendants' second Amended Answer and that since the recording of said deed in which Ralph R. Thomas is named as grantor and Sylvia A. Henderson is named as grantee which deed purports to have been executed on the 30th day of November, 1946, and which deed is now recorded in Book 71, of the City Records of the Anchorage Recording Precinct at page 21, and Sylvia A. Henderson is now the record owner of Lot 2 in Block 37-D of the South Addition to the City of Anchorage, Alaska, and deny all and every other allegation contained in said paragraph II.

Wherefore, defendants Ray Wolfe, Esther Wolfe, Robert Wolfe, Margaret Wolfe and Ed Wilholth pray that they be granted the relief as asked in their Answer and Cross Complaint herein previously filed and such other and further relief as to the Court may seem meet and equitable in the premises.

DAVIS & RENFREW,
Attorneys for Wolfe Hardware & Furniture.

By /s/ PAUL F. ROBISON.

Duly verified.

[Endorsed]: Filed February 17, 1949.

[Title of District Court and Causes.]

No. A-5087

No. A-5088.

No. A-5087 and A-5088.

Third Amended Answer

Come now the defendants, Audrey Cutting and Sylvia A. Henderson and for their third amended answer, admit, deny, and allege as follows:

I.

Admit all the allegations of all the paragraphs of the original complaints and the complaints in intervention admitted in the original and amended answers except that paragraph in the original answer numbered I which is hereby specifically denied.

II.

Audrey Cutting, one of the defendants named herein, denies that she is the owner or ever has been the owner or has any interest whatever in lot number 2 of block number 37-D of the South Addition to the City of Anchorage.

III.

Denies all the allegations of all the paragraphs of the original complaints and the complaints in intervention denied in the original and amended answers.

Affirmative Defense

I.

That the defendant, Audrey Cutting, entered into a contract with a licensed contractor, one Russell W. Smith, under the terms of which said Russell W. Smith agreed to construct the residence for the sum of Ninety-five Hundred Dollars (\$9500) and that said contractor personally made, on his own behalf as an independent contractor, all of the contracts for labor and/or materials set forth in the complaint and defendant, Audrey Cutting, duly posted lien non-liability notices on the premises and that said defendant, Audrey Cutting, is neither guardian nor agent for the defendant, Sylvia Henderson.

II.

That the defendant, Sylvia A. Henderson, is a minor child under the age of 18 years and is the sole owner of lot number 2 of block 37-D as aforementioned and that said defendant, Sylvia A. Henderson, caused to be posted on said lot on or about the 1st day of May, 1948, a notice of non-responsibility for liens.

Wherefore, defendant prays that plaintiffs take nothing by their complaints and intervention and that they be hence dismissed with costs.

/s/ HAROLD J. BUTCHER,
Attorney for Defendant.

Duly verified.

[Endorsed]: Filed February 18, 1949.

[Title of District Court and Causes.]

No. A-5087.

No. A-5088.

No. A-5087 and A-5088.

REPLY

Comes now Ketchikan Spruce Mills, Inc., a Corporation, and Alaskan Plumbing & Heating Co., a Corporation, and for reply to the affirmative defense of the defendants, Audrey Cutting and Sylvia A. Henderson, answer, admit, deny and allege as follows:

Intervenors admit that the defendant, Audrey Cutting, entered into a contract with Russell W. Smith to construct a residence on Lot Two (2), Block Thirty-seven "D" (37-D) of the South Addition to the City of Anchorage, that Sylvia A. Henderson is a minor child; and that the said Sylvia A. Henderson is now the record owner of title to the above-described premises by deed from Ralph R. Thomas recorded August 4, 1948.

Intervenors deny each and every allegation contained in the said affirmative defense, other than the allegations specifically admitted herein.

Wherefore, intervenors pray for judgment according to the prayer of their complaint.

/s/ WENDELL P. KAY,
Attorney for Intervenors, Ketchikan Spruce Mills,
Inc., and Alaskan Plumbing & Heating Co.

Duly verified—Lyle E. Anderson for Ketchikan Spruce Mills, Inc.

Duly verified—Leo J. Haldiman for Alaskan Plumbing and Heating Co.

Receipt of copy acknowledged.

[Endorsed]: Filed February 21, 1949.

[Title of District Court and Causes.]

No. A-5087.

No. A-5088.

Nos. A-5087 and A-5088.

No. A-5088.

No. A-5087.

No. A-5088.

REPLY TO THIRD AMENDED ANSWER OF
AUDREY CUTTING AND SYLVIA HENDERSON.

Come now Ray Bullerdick et al, plaintiffs in case No. A-5087, Ted Van Thiel et al, Co-partners as Brady's Floor Covering, plaintiffs in Case No. A-5088, E. V. Fritts et al, Co-partners as Alaska Paint and Glass Co., plaintiffs in case No. A-5088, City Electric of Anchorage, Inc., a corporation, plaintiff in case No. A-5088, and Ted Van Thiel et al, Co-partners as Kennedy Hardware, Interveners in case No. 5088, and replying to the Third

Amended Answer of defendants Audrey Cutting and Sylvia Henderson, admit, deny and allege as follows:

I.

Replying to Paragraph I of the Affirmative Defense set forth in said answer, deny each and every allegation therein contained, except that allegation that the defendant, Audrey Cutting, entered into a contract with a licensed contractor, one Russell W. Smith, under the terms of which said Russell W. Smith agreed to construct the residence for the sum of Ninety-eight Hundred Dollars (\$9800.00) and that said contractor personally made, on his own behalf as an independent contractor, all of the contracts for labor and/or materials set forth in the complaints of the plaintiffs and intervenor above named.

II.

Replying to Paragraph II of said Affirmative Defense set forth in said answer, deny each and every allegation therein contained, except that plaintiffs admit that the defendant Sylvia Henderson, is a minor, under the age of 18 years and of the age of about 17 years, and is and has been since August 4th, 1949, the record owner of Lot 2 of Block 37-D, and in that behalf plaintiffs allege that said ownership is inferior and subordinate to the claims of lien of the aforesaid plaintiffs and plaintiff in intervention, described and set forth in their respective complaints herein filed.

Wherefore Plaintiffs Pray for Judgment As prayed for in their respective complaints.

/s/ GEORGE B. GRIGSBY,
Attorney for above-named Plaintiffs and Inter-
venors.

A true copy.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed February 21, 1949.

[Title of District Court and Causes.]

No. A-5087.

No. A-5088.

Nos. A-5087 and A-5088.

REPLY

Comes now one of the plaintiffs in intervention, Arthur F. Waldron and Joseph A. Columbus, Co-partners doing business under the firm name and style of Anchorage Sand and Gravel Company, and in reply to the Third Amended Answer and Affirmative Defense of Audrey Cutting and Sylvia Henderson, and admits, denies and alleges as follows:

I.

The plaintiff in intervention, Anchorage Sand and Gravel Company, admits that Audrey Cutting

entered into a contract with Russell W. Smith as contractor under the terms of which Russell W. Smith agreed to construct a residence, but states that the contract was for the sum of Nine Thousand Eight Hundred (\$9,800.00) Dollars, and not Nine Thousand Five Hundred (\$9,500.00) Dollars as alleged in paragraph I of the defendant's Third Amended Answer.

In further answer to paragraph I of the Affirmative Defense and defendant's Third Amended Answer, plaintiff in intervention denies that said contractor personally made, on his own behalf as an independent contractor, all of the contracts for labor and/or materials set forth in the complaint; plaintiff in intervention denies that Audrey Cutting duly posted lien non-liability notices of that said defendant.

In further answer to paragraph I of the Affirmative Defense of defendant's Third Amended Answer, plaintiff in intervention denies that Audrey Cutting is neither guardian nor agent for the defendant, Sylvia Henderson.

II.

In answer to paragraph II of the Affirmative Defense of defendant's Third Amended Answer, the Anchorage Sand and Gravel Company, plaintiff in intervention, admits that Sylvia Henderson is a minor child under the age of eighteen years, but denies that Sylvia Henderson is the sole owner of Lot 2, Block 37-D; denies that said defendant,

Sylvia Henderson caused to be posted on said lot, on or about the 1st day of May, 1948, a notice of non-responsibility for liens.

Wherefore, plaintiff in intervention, Anchorage Sand and Gravel Company, prays that defendants Audrey Cutting and Sylvia Henderson, take nothing by their Affirmative Defense and that the plaintiff in intervention have judgment against the defendants as asked for in the complaint.

ANCHORAGE SAND AND
GRAVEL COMPANY,

By /s/ ARTHUR F. WALDRON,
Co-partner.

Plaintiff in Intervention.

/s/ J. L. McCARREY, JR.,
Attorney for Plaintiff in Inter-
vention.

Duly verified—Arthur F. Waldron.

Receipt of copy acknowledged.

[Endorsed]: Filed February 21, 1949.

[Title of District Court and Causes.]

No. A-5087.

No. A-5088.

Nos. A-5087 and A-5088.

REPLY

Comes now intervenor, Herald E. Stringer, trustee for the estate of Russel W. Smith, bankrupt, and replies to the Third Amended Answer of Defendant Audrey Cutting on file herein as follows:

I.

Denies the allegation contained in paragraph I of the Affirmative Defense that the sum for which the residence was to be constructed was \$9,500.00, and alleges that said sum was in an amount of \$10,500.00.

II.

States that he has no knowledge, information or belief sufficient to enable him to answer the allegations contained in the last five lines of Paragraph I of the Affirmative Defense, and therefore denies the same.

III.

States that he has no knowledge, information or belief sufficient to enable him to answer the allegations contained in Paragraph II of the Affirmative Defense, and therefore denies the same.

Wherefore, intervenor prays judgment against

the defendant, Audrey Cutting, as asked for in his complaint in intervention.

/s/ JOHN H. DIMOND,
Attorney for Intervenor, Herald E. Stringer, trustee for estate of Rusel W. Smith, Bankrupt.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed February 24, 1949.

[Title of District Court and Causes.]

No. A-5087 and A-5088.

**DEFENDANTS' OBJECTIONS TO FINDINGS
OF FACT AND CONCLUSIONS OF LAW
AND JUDGMENT AS PROPOSED BY
PLAINTIFFS**

Comes now the defendant, Audrey Cutting, by and through her attorney, Harold J. Butcher, and objects to the proposed Findings of Fact and Conclusions of Law and Judgment in the above case on the following grounds:

Findings of Fact and Conclusions of Law, which under our code, are essential to judgment in non-jury cases must be found and determined in accordance with well established principles of law, one of which we quote as follows:

“Findings are clearly improper when made in favor of a party who, having the burden of proof

upon an issue, offers no evidence relative thereto.”

This quotation is made from Bancrofts Code Practice and Remedies, Volume II, Section 1692, Page 2173, and the same section in Volume III of Bancrofts Supplement, page 2219, reads as follows:

“But a finding contrary to uncontradicted evidence is not authorized.”

These rules of law are supported by the cases of *Rudneck v. Southern California Metal Company*, 193 Pac. 775, *In re Rasmussen* 205 Pac. 72, and *Watkins v. Glass*, 89 Pac. 840 and *Richards v. Jarvis*, 258 Pac. 317.

It is defendant's contention that paragraph XXIX, page 7, of the proposed Findings of Fact and Conclusions of Law not only is not supported by the evidence, but that the plaintiffs, on whom rested the burden of proving that there was no delivery of the deed, offered no evidence whatever on the subject and that the only evidence offered was by the defendant, Audrey Cutting, and by the introduction of the deed itself and the copy of the mortgage into evidence, together with the mortgage note.

Disregarding all oral testimony of the witness Audrey Cutting, and concerning ourselves with the deed alone, we find that the deed itself creates a legal presumption of delivery as of the date of its making. This rule is clearly stated on page 84 of the last edition of *Jones on Evidence Civil Cases*, Volume 1, Section 50, and which reads as follows;

“So where a deed is duly signed, attested and witnessed, there arises a presumption of sealing and delivery and the time of its execution and delivery is presumed to be on the day of its date.”

This rule of law is amply supported by ruling cases and by other text writers on the subject, “Presumptions in Evidence.” Therefore, by the deed alone, there was created a presumption of delivery in the defendant, Sylvia Henderson, which until rebutted by evidence that no delivery occurred, was controlling. The writer has been unable to find any case whatever which indicates that the act of recording is any evidence of the act of delivery under such circumstances.

The presumption of delivery by virtue of the deed placed the burden of proving non-delivery of the deed on the plaintiffs.

The un rebutted presumption of delivery of the deed to the defendant, Sylvia Henderson, standing alone would prevent a finding as set forth in paragraph XXIX of the proposed findings, however, the presumption of delivery does not stand alone. It is supplemented by the uncontradicted testimony of Audrey Cutting and the further proof, also uncontradicted, of the making of the mortgage and its signing by Sylvia Henderson together with the mortgage note. There is, therefore, no basis for the finding of delivery on August 4, 1948, as set forth in paragraph XXIX and no basis in law by which the court could find otherwise than in accordance with the uncontradicted proof of the defendant.

Therefore, it is requested that the finding that there was no delivery of the deed until after construction of the buildings be struck from the Findings of Fact and the Judgment.

Respectfully submitted,

/s/ HAROLD J. BUTCHER,

Attorney for the Defendant.

[Endorsed]: Filed April 4, 1949.

[Title of District Court and Causes.]

No. A-5087.

No. A-5088.

Nos. A-5087 and A-5088

No. A-5088.

No. A-5087.

No. A-5088.

No. A-5087.

No. A-5087.

No. A-5088.

Findings of Fact and Conclusions of Law

The above-entitled causes No. A-5087 and A-5088, having been consolidated for trial by order of the Court, pursuant to Stipulation of all the parties, plaintiffs, defendants and intervenors, came on for

trial before the Court without a jury on the 8th day of February, 1949; the trial proceeded thereafter on the 8th, 9th and 10th, 14th, 15th and 16th of February, 1949, and was concluded on the latter date.

Ray Bullerdick, et al, plaintiffs in Cause No. A-5087, Ted Van Thiel, et al, co-partners as Brady's Floor Covering, E. V. Fritts, et al, co-partners as Alaska Paint and Glass Company, and City Electric of Anchorage, Inc., a corporation, plaintiffs in cause No. A-5088 and the intervenors, Ted Van Thiel, et al, co-partners as Kennedy Hardware, appeared in person and by their attorney, George B. Grigsby.

The intervenors, Arthur F. Waldron, et al, co-partners as Anchorage Sand and Gravel Company, appeared in person and by their attorney, J. L. McCarrey, Jr.

The intervenors, Ketchikan Spruce Mills, Inc., a corporation, and Alaskan Plumbing and Heating Company, Inc., a corporation, appeared by their attorney, Wendell P. Kay.

The intervenor, Herald E. Stringer, Trustee for the Estate of Russell W. Smith, bankrupt, appeared in person.

The intervenors, Ken Hinchey and Nadine Hinchey, co-partners, as Ken Hinchey Company, appeared in person and by their attorneys Edward V. Davis and Paul F. Robison.

The intervenors, Ray Wolfe, Esther Wolfe, et al, co-partners as Wolfe Hardware and Furniture,

appeared in person and by their attorneys, Edward V. Davis and Paul F. Robison.

The defendants, Audrey Cutting and Sylvia A. Henderson, a minor, appeared by their attorney, Harold J. Butcher.

No appearance was made by the defendant, Ralph R. Thomas in person or by attorney.

Witnesses were sworn and testified and documentary evidence was introduced on behalf of plaintiffs, intervenors and defendants, and thereafter argument of respective counsel was heard and considered; thereafter, on March 4, 1949, the Court having heard the testimony and being fully advised in the premises, rendered its oral opinion on the claims of the several parties and directed that Findings of Fact and Conclusions of Law be prepared and submitted in accordance therewith, and now the Court makes its Findings of Fact and Conclusions of Law, as follows:

I.

That the plaintiffs Ted Van Thiel, et al., and Gene Brady were at all times herein mentioned and now are, co-partners doing business under the firm name and style of Brady's Floor Covering.

II.

That the plaintiffs, E. V. Fritts, et al., were and at all times herein mentioned and now are, co-partners, doing business under the firm name and style of Alaska Paint and Glass Company.

III.

That the City Electric of Anchorage, Inc., is a corporation organized and existing under and by virtue of the laws of the Territory of Alaska and has paid its annual license tax for the year 1948 and filed its annual Financial Statement due March 1, 1948.

IV.

That the intervenors, Arthur F. Waldron and Joseph A. Columbus, were at all times hereinafter mentioned and now are co-partners doing business under the firm name and style of Anchorage Sand and Gravel Company.

V.

That the intervenors, Ketchikan Spruce Mills, Inc., and Alaskan Plumbing and Heating Company, Inc., were at all times hereinafter mentioned and now are corporations organized and existing under and by virtue of the laws of the Territory of Alaska and have respectively filed their annual license tax for the year 1948 and have filed their annual Financial Statement due March 1, 1948.

VI.

That the intervenor, Herald E. Stringer, Trustee, in the Matter of the Estate of Russell W. Smith, Bankrupt, is the duly appointed, qualified and acting Trustee for the Estate of Russell W. Smith, bankrupt.

VII.

That the intervenors, Ted Van Thiel, et al., were

at all times hereinafter mentioned and now are co-partners doing business under the firm name and style of Kennedy Hardware.

VIII.

That the intervenors, Ken Hinchey and Nadine Hinchey, were at all times hereinafter mentioned and now are co-partners doing business under the firm name and style of Ken Hinchey Company.

IX.

That the intervenors, Ray Wolfe, et al., were at all times hereinafter mentioned and now are co-partners doing business under the firm name and style of Wolfe Hardware and Furniture.

X.

That at all times hereinafter mentioned and until the 4th day of August, 1948, the defendant, Ralph R. Thomas, was the owner of record, and the defendant, Audrey Cutting, was the reputed owner of that certain real property situate in the City of Anchorage, Alaska, particularly described as follows, to wit:

Lot Two (2) in Block Thirty-seven D (37-D) of the South Addition to the City of Anchorage, Alaska, according to the official map and plat thereof on file and of record in the office of the United States Commissioner and Ex-officio Recorder for Anchorage Precinct at Anchorage, Alaska, together with the residence building situated thereon.

XI.

That during the period from April 3, 1948, and June 23, 1948, the defendant, Russell W. Smith, was engaged in and completed the construction of a residence building on the premises hereinbefore described under a contract with the defendant, Audrey Cutting, which said contract was on the 30th day of April, 1948, reduced to writing and by the terms of which the said Audrey Cutting agreed to pay the said Russell W. Smith the sum of Nine Thousand Eight Hundred Dollars (\$9,800.00) for said construction.

That the said construction was with the knowledge, consent and at the instance of the defendant, Ralph R. Thomas.

XII.

That during the aforesaid period the above-named plaintiffs and intervenors performed labor and furnished materials in the construction of said residence building at the request of the said Russell W. Smith for which the said Russell W. Smith promised and agreed to pay, except in the instances hereinafter stated.

XIII.

That the plaintiff, Ray Bullerdick, during the period between May 15, 1948, and June 15, 1948, performed labor on the construction of said building as a carpenter, of the reasonable value and at the agreed compensation of \$627.76.

XIV.

That the plaintiff, A. L. Baxley, during the period from May 3, 1948, and June 10, 1948, performed labor as a carpenter, on said building and furnished material used in the construction thereof, at the agreed price and reasonable value of \$914.88.

XV.

That the plaintiff, Edward C. Rankin, during the period from May 17, 1948, and June 12, 1948, performed labor as a carpenter on the construction of said building, of the reasonable value and at the agreed compensation of \$494.76.

XVI.

That the plaintiff, Lee Runkle, during the period from May 3, 1948, and June 10, 1948, performed labor as a carpenter on the construction of said building of the reasonable value and at the agreed compensation of \$734.16.

XVII.

That the plaintiff, Arden Bell, during the period from May 3, 1948, to June 11, 1948, performed labor as a carpenter on the construction of said building of the reasonable value and at the agreed compensation of \$760.76.

XVIII.

That the plaintiff, William Besser, during the period from May 18, 1948, and May 21, 1948, performed labor as a laborer on the construction of said building of the reasonable value and at the agreed compensation of \$64.00.

XIX.

That the plaintiff, Brady's Floor Covering, during the period June 2, 1948, to June 18, 1948, performed labor and furnished material in the construction of said building of the reasonable value of \$474.41.

XX.

That the plaintiff, Alaska Paint and Glass Company, during the period from June 1, 1948, to June 31, 1948, performed labor and furnished material in the construction of said building of the reasonable value of \$700.00.

XXI.

That City Electric of Anchorage, Inc., during the period between April 28, 1948, and June 23, 1948, performed labor and furnished material in the construction of said building of the reasonable value of \$473.99.

XXII.

That the intervenor, Anchorage Sand and Gravel Company, during the period between May 5, 1948, and May 29, 1948, performed labor and furnished material in the construction of said building of the reasonable value of \$377.61, that the said labor and material was performed and furnished at the request of the defendant, Audrey Cutting, for which she promised and agreed to pay.

That during the period between May 10, 1948, and May 18, 1948, Arthur F. Waldron, Roger N. Waldron and Jack Harrison were co-partners doing business as Cinder Concrete Products Company and

as such co-partners furnished material in the construction of said building at the request of the said defendant, Russell W. Smith, and for which the said Russell W. Smith promised and agreed to pay the reasonable value therefor of \$628.27.

That thereafter, the said Cinder Concrete Products Company, assigned its said claim against the said Russell W. Smith to the intervenor, Anchorage Sand and Gravel Comapny, and at the time of the trial of this action the said Anchorage Sand and Gravel Company was the owner of said claim.

XXIII.

The the intervenor, Ketchikan Spruce Mills, Inc., during the period between May 3, 1948, and June 9, 1948, furnished material for the construction of said building of the reasonable value of \$2,717.86, that said material was furnished at the request of the defendant, Audrey Cutting, for which she promised and agreed to pay.

XXIV.

That the Alaskan Plumbing and Heating Company, during the period from May 21, 1948, to June 18, 1948, performed labor and furnished material in the construction of said building of the reasonable value of \$1,685.00.

XXV.

That intervenor, Kennedy Hardware, during the period from May 20, 1948, to June 19, 1948, furnished material for the construction of said building of the reasonable value of \$112.95.

XXVI.

That intervenor, Ken Hinchey Company, during the period April 23, 1948, to May 25, 1948, performed labor and furnished material in the construction of a cesspool on the premises on which said building was situated, the reasonable value of which is \$680.49.

XXVII.

That intervenor, Wolfe Hardware and Furniture, during the period May 3, 1948, to June 10, 1948, furnished material for the construction of said building of the reasonable value of \$199.80.

XXVIII.

That none of the plaintiffs or intervenors who furnished labor or material in the construction of the said residence building have been paid any part of the sums respectively due them for the said labor or material and the said amounts as hereinbefore stated are, all and the whole thereof, due, owing and unpaid.

XXIX.

That the defendant, Ralph R. Thomas, on the 20th day of November, 1946, executed a deed conveying the premises hereinbefore described to the defendant, Sylvia A. Henderson, a minor, and thereafter, after the completion of the construction of the building on the premises hereinbefore described, the same was delivered to the said Sylvia A. Henderson and was thereafter, on the 4th day of August, 1948, recorded in the office of the Recorder for the An-

chorage Recording Precinct, Third Division, Territory of Alaska.

XXX.

That by reason of the premises the aforesaid, plaintiffs and intervenors, respectively, and Cinder Concrete Products Company, acquired liens upon the premises hereinbefore described for the sums respectively due them as hereinbefore set forth, and each of said plaintiffs and intervenors thereafter, and within the time allowed by law for the purpose of securing and perfecting their said liens, did each file for record in the Office of the Recorder for the Anchorage Recording Precinct, Territory of Alaska, a claim containing a true statement of his demand, duly verified, after deducting all just credits and offsets, with the name of the owner and reputed owner of the premises on which lien was claimed, and also the name of the person to whom was furnished the material and labor and also a description of the property to be charged with said lien sufficient for identification; that said claims of lien were duly recorded in the City Records of said Recording Precinct in a book kept by said Recorder for said purpose.

That said plaintiffs, intervenors and the Cinder Concrete Products Company, respectively, paid for filing and recording their said liens, as follows:

Plaintiffs, Ray Bullerdick, A. L. Baxley, Edward C. Rankin, Lee Runkel, Arden Bell and William Besser, each the sum of \$2.55.

Brady's Floor Covering, the sum of \$4.05.

Alaska Paint and Glass Company, the sum of \$3.40.

City Electric of Anchorage, Inc., the sum of \$2.85.

The Anchorage Sand and Gravel Company and the Cinder Concrete Products Company, each the sum of \$2.50.

The Ketchikan Spruce Mills, Inc., and Alaska Plumbing and Heating Company, Inc., each the sum of \$2.25.

Kennedy Hardware, the sum of \$4.05.

Ken Hinchey Company and Wolfe Hardware and Furniture, each the sum of \$3.60.

XXXI.

That the defendant, Russell W. Smith, acquired a lien on the premises hereinbefore described by reason of the performance of his contract with the defendant, Audrey Cutting, and for services in addition thereto in the sum of \$10,000.00.

That the said Russell W. Smith was, on the 16th day of July, 1948, in certain proceedings held in the above entitled Court, duly adjudged a bankrupt and said bankruptcy proceedings are still pending.

XXXII.

That the defendant, Sylvia A. Henderson, is the owner of the premises described herein by virtue of a deed of conveyance thereof from the defendant, Ralph R. Thomas, dated November 30, 1946, and recorded August 4, 1948, but that the interest of the said Sylvia Henderson, a minor, in said premises, is inferior and subordinate to the liens of the plain-

tiffs and intervenors herein set forth and described.

XXXIII.

That none of the plaintiffs and intervenors heretofore named who performed labor or furnished material in the construction of the building on the premises hereinbefore described had any knowledge or notice of the execution of said deed from the said Ralph R. Thomas to the said Sylvia A. Henderson or any notice that the said Sylvia A. Henderson claimed any interest in said premises until long after the completion of the construction of said building.

XXXIV.

That neither the defendant, Ralph R. Thomas, Sylvia A. Henderson, a minor, or the defendant, Audrey Cutting, within three days after the construction of said building was commenced upon the premises hereinbefore described, posted any notice or notices upon said premises to the effect that they or either of them, would not be responsible for the payment of any claims for labor or material incurred in the said construction.

From the foregoing facts, the Court deduces Conclusions of Law as follows:

Conclusions of Law

I.

That there became due and owing to each of the plaintiffs and intervenors, save to the intervenors, Anchorage Sand and Gravel Company and Ketchi-

kan Spruce Mills, Inc., from the defendant, Russell W. Smith, for the labor and material performed and furnished respectively by each of them, the sums hereinbefore set forth as the agreed price and reasonable value thereof, together with interest allowed by law, but that no personal judgment can be rendered on any of said claims against the said Russell W. Smith, by reason of his having been adjudged a bankrupt prior to the commencement of the above entitled actions.

II.

That there is due and owing to the intervenors, Anchorage Sand and Gravel Company and to the Ketchikan Spruce Mills, Inc., from the defendant, Audrey Cutting, the sums respectively due each of them for labor performed and material furnished as hereinbefore set forth as the agreed price and reasonable value thereof, together with interest as allowed by law, costs and disbursements, including attorney fees, and said intervenors are entitled to a personal judgment for said amounts against the defendant, Audrey Cutting.

III.

That the plaintiffs and intervenors heretofore named, respectively, have liens upon the premises hereinbefore described and the residence building constructed thereon as aforesaid, for the sums respectively found due them as aforesaid, with interest as allowed by law, together with costs and disbursements, including attorney's fees, as follows, to wit:

Plaintiffs in Cause No. A-5087

Ray Bullerdick, for the sum of \$627.77 with interest at 6% per annum from June 15, 1948, plus the sum of \$2.55 for filing and recording claim of lien.

A. L. Baxley, for the sum of \$914.88 with interest at 6% per annum from June 10, 1948, plus the sum of \$2.55 for filing and recording claim of lien.

Edward C. Rankin, for the sum of \$494.76, with interest at 6% per annum from June 12, 1948, plus the sum of \$2.55 for filing and recording claim of lien.

Lee Runkle, for the sum of \$734.16, with interest at 6% per annum from June 10, 1948, plus the sum of \$2.55 for filing and recording claim of lien.

Arden Bell, for the sum of \$760.76, with interest at 6% per annum from June 11, 1948, plus the sum of \$2.55 for filing and recording claim of lien.

William Besser, for the sum of \$64.00, with interest at 6% per annum from May 21, 1948, plus the sum of \$2.55 for filing and recording claim of lien.

The above-named plaintiffs, jointly, for the sum of \$750.00 as reasonable attorney's fees for the prosecution of said action, together with their costs of suit.

Plaintiffs in A-5088

Brady's Floor Covering, for the sum of \$474.41, with interest at 6% per annum from June 8, 1948, plus the sum of \$4.05 for filing and recording claim of lien.

Alaska Paint and Glass Co. for the sum of \$700.00,

with interest at 6% per annum from June 21, 1948, plus the sum of \$3.40 for filing and recording claim of lien.

City Electric of Anchorage, Inc., for the sum of \$473.99, with interest at 6% per annum from June 23, 1948, plus the sum of \$2.85 for filing and recording claim of lien.

The above named plaintiffs in A-5088 jointly, for the sum of \$350.00 as reasonable attorney's fees for the prosecution of said action, together with costs of suit.

Intervenors

Anchorage Sand and Gravel Company, for the sum of \$377.61 on their first cause of action, with interest at 6% per annum from May 29, 1948, plus the sum of \$2.50 for filing and recording claim of lien, and for the sum of \$628.27 on their second cause of action, with interest at 6% per annum from May 18, 1948, plus the sum of \$2.50 for filing and recording claim of lien, and for the sum of \$300.00 as reasonable attorney's fees for the prosecution of said action, together with costs of suit.

Ketchikan Spruce Mills, Inc., for the sum of \$2,717.86, with interest at 6% per annum from June 9, 1948, plus the sum of \$2.25 for filing and recording claim of lien; and Alaskan Plumbing and Heating Company, Inc., for the sum of \$1,685.00 with interest at 6% per annum from June 18, 1948, plus the sum of \$2.25 for filing and recording claim of lien; and said intervenors, jointly, for the sum of \$700.00 as reasonable attorney's fees for the prosecution of said action, together with costs of suit.

Kennedy Hardware, for the sum of \$112.95, with interest at 6% per annum from June 19, 1948, plus the sum of \$4.05 for filing and recording claim of lien and for the sum of \$50.00 as reasonable attorney's fees for the prosecution of said action, together with costs of suit.

Ken Hinchey Company, for the sum of \$680.49, with interest at 6% per annum from May 25, 1948, plus the sum of \$3.60 for filing and recording claim of lien, and for the sum of \$200.00 as reasonable attorney's fees for the prosecution of this action, together with costs of suit.

Wolfe Hardware and Furniture, for the sum of \$199.80, with interest at 6% per annum from June 10, 1948, plus the sum of \$3.60 for filing and recording claim of lien, and for the sum of \$100.00 as reasonable attorney's fees for the prosecution of said action, together with costs of suit.

IV.

Intervenor, Herald E. Stringer, Trustee for the Estate of Russell W. Smith, Bankrupt, is not entitled to judgment upon the lien described in his complaint in intervention.

V.

That the plaintiffs and intervenors, aforesaid, except the said Herald E. Stringer, Trustee for the Estate of Russell W. Smith, Bankrupt, are entitled to a decree establishing their respective liens upon the premises and residence building hereinbefore described, for each and all of said sums respectively

due each of them as aforesaid, and also decreeing that the whole of said premises is required for the convenient use and occupation of the residence building thereon; and further decreeing that all and singular the said premises mentioned and described herein be hold at public auction by the United States Marshal for the Third Division, Territory of Alaska, in the manner provided by law, for the sale of real estate on execution, and that the plaintiffs and intervenors aforesaid to whom judgments for their respective liens have been awarded, or any of the parties to the aforesaid actions may become purchasers at such sale; and further decreeing that said Marshal, out of the proceeds of said sale retain his fees, disbursements, and commissions, if any, and from the balance pay to the plaintiffs and intervenors, respectively, or their respective attorneys, the amount of their respective liens, including costs, disbursements and attorney's fees, with interest at the rate of 6% per annum from the date of said decree; and that if the proceeds of said sale be insufficient to pay said lien-holders in full, after deducting said Marshal's fees, costs, disbursements and commissions, the same shall be applied pro rata to the payment of their respective liens; and that any balance remaining in the hands of said Marshal after deducting his said fees, costs, disbursements and commissions, and after paying of the amounts due said respective lien-holders, shall be paid to the defendant, Sylvia A. Henderson, a minor; and said decree shall further provide that upon such sale

being made the said Marshal shall give the purchaser or purchasers a Certificate of Sale as provided by law, and that the said purchaser or purchasers at said sale be let into the possession of said premises, and that any of the parties to this action who may be in possession of said premises, and any person who since the commencement of the aforesaid actions has come into possession under them or either of them deliver possession thereof to such purchaser or purchasers, on production of said Marshal's Certificate of Sale of said premises.

And Judgment and Decree is hereby ordered to be entered accordingly.

Dated at Anchorage, Alaska, this 8th day of March, 1949.

/s/ ANTHONY J. DIMOND.

Receipt of a copy acknowledged.

In the District Court for the Territory of Alaska
Third Division
No. A-5087

RAY BULLERDICK, A. L. BAXLEY, EDWARD
C. RANKIN, LEE RUNKLE, ARDEN BELL
and WILLIAM BESSER,

Plaintiffs,

vs.

RALPH R. THOMAS, AUDREY CUTTING and
RUSSELL W. SMITH,

Defendants.

No. A-5088

TED VAN THIEL, PATSY VAN THIEL, E. P. CARTEE, JEAN CARTEE, R. C. REEVE and JANICE REEVE, Co-partners under the firm name and style of KENNEDY HARDWARE, and GENE BRADY, Co-partners under the firm name and style of BRADY'S FLOOR COVERING, and E. V. FRITTS, WILLIAM J. WALLACE, and EINER G. NELSON, Co-partners under the firm name and style of ALASKA PAINT AND GLASS CO., and CITY ELECTRIC OF ANCHORAGE, INC., a corporation,

Plaintiffs,

vs.

RALPH R. THOMAS, AUDREY CUTTING and RUSSELL W. SMITH,

Defendants.

Nos. A-5087 and A-5088

ARTHUR F. WALDRON and JOSEPH A. COLUMBUS, Co-partners doing business under the firm name and style of ANCHORAGE SAND AND GRAVEL COMPANY,

Plaintiffs in Intervention,

vs.

RAY BULLERDICK et al, and TED VAN THIEL, et al, Co-partners as KENNEDY HARDWARE, and GENE BRADY, Co-part-

ners as BRADY'S FLOOR COVERING, and E. V. FRITTS et al, Co-partners as ALASKA PAINT AND GLASS CO., and CITY ELECTRIC OF ANCHORAGE, Inc., a corporation, and RALPH R. THOMAS, AUDREY CUTTING and RUSSELL SMITH: SYLVIA A. HENDERSON, a minor; KETCHIKAN SPRUCE MILLS, INC., a corporation; ALASKAN PLUMBING AND HEATING COMPANY, INC., a corporation; KEN HINCHEY CO., RAY WOLFE, ESTHER WOLFE, ROBERT WOLFE, MARGARET WOLFE and ED WILHOLTH, Co-partners doing business under the firm name and style of WOLFE HARDWARE AND FURNITURE,

Defendants in Intervention.

No. A-5088

KETCHIKAN SPRUCE MILLS, INC., a corporation, and ALASKAN PLUMBING AND HEATING COMPANY, INC., a corporation,
Plaintiffs in Intervention.

No. A-5087

HERALD E. STRINGER, Trustee for the estate of RUSSELL W. SMITH, Bankrupt,
Intervenor.

No. A-5088

TED VAN THIEL, PATSY VAN THIEL, et al,
Co-partners under the firm name and style of
KENNEDY HARDWARE,
Plaintiffs in Intervention.

No. A-5087

KEN HINCHEY and NADINE HINCHEY, Co-
partners, doing business as KEN HINCHEY
COMPANY,
Defendants in Intervention.

No. A-5087, No. A-5088

RAY WOLFE, ESTHER WOLFE, ROBERT
WOLFE, MARGARET WOLFE and ED
WILHOLTH, Co-partners doing business as
WOLFE HARDWARE AND FURNITURE,
Defendants in Intervention.

JUDGMENT AND DECREE

The above entitled causes No. A-5087 and A-5088, having been consolidated for trial by order of the Court, pursuant to Stipulation of all the parties, plaintiffs, defendants and intervenors, came on for trial before the Court without a jury on the 8th day of February, 1949; the trial proceeded thereafter on the 8th, 9th and 10th, 14th, 15th and 16th of February, 1949, and was concluded on the latter date.

Ray Bullerdick, et al, plaintiffs in Cause No. A-5087, Ted Van Thiel, et al, co-partners as Brady's

Floor Covering, E. V. Fritts, et al, co-partners as Alaska Paint and Glass Company, and City Electric of Anchorage, Inc., a corporation, plaintiffs in case No. A-5088, and the intervenors, Ted Van Thiel, et al, co-partners as Kennedy Hardware, appeared in person and by their attorney, George B. Grigsby.

The intervenors, Arthur F. Waldron, et al, co-partners as Anchorage Sand and Gravel Company, appeared in person and by their attorney, J. L. McCarrey, Jr.

The intervenors, Ketchikan Spruce Mills, Inc., a corporation, and Alaskan Plumbing and Heating Company, Inc., a corporation, appeared by their attorney, Wendell P. Kay.

The intervenor, Herald E. Stringer, Trustee for the Estate of Russell W. Smith, bankrupt, appeared in person.

The intervenors, Ken Hinchey and Nadine Hinchey, co-partners, as Ken Hinchey Company, appeared in person and by their attorneys, Edward V. Davis and Paul F. Robison.

The intervenors, Ray Wolfe, Esther Wolfe, et al, co-partners as Wolfe Hardware and Furniture, appeared in person and by their attorneys, Edward V. Davis and Paul F. Robison.

The defendants, Audrey Cutting and Sylvia A. Henderson, a minor, appeared by their attorney, Harold J. Butcher.

No appearance was made by the defendant, Ralph R. Thomas, in person or by attorney.

Witnesses were sworn and testified and docu-

mentary evidence introduced on behalf of plaintiffs, intervenors and defendants, and thereafter argument of respective counsel was heard and considered, and the court having heard the testimony and arguments of counsel, thereafter on March 4, 1949, rendered its oral opinion herein on the claims of the several parties and having made its Findings of Fact and Conclusions of Law in accordance therewith, Now Therefore, by reason of the law and the findings aforesaid,

It Is Ordered, Adjudged and Decreed:

That there is due and owing to the respective plaintiffs and intervenors in the above entitled actions, for labor performed and material furnished in the construction of the building on the premises in said Findings and hereinafter described, the amounts respectively due them as set forth in said findings.

That said plaintiffs and intervenors each have a lien upon the said building and premises for the amount of their respective claims as set forth in said findings and as follows:

Plaintiffs in Cause No. A-5087

Ray Bullerdick, for the sum of \$627.77, with interest at the rate of 6% per annum from June 15, 1948, plus the sum of \$2.55.

A. L. Baxley, for the sum of \$914.88, with interest at the rate of 6% per annum from June 10, 1948, plus the sum of \$2.55.

Edward C. Rankin, for the sum of \$494.76, with interest at the rate of 6% per annum from June 12, 1948, plus the sum of \$2.55.

Lee Runkle, for the sum of \$734.16, with interest at the rate of 6% per annum from June 10, 1948, plus the sum of \$2.55.

Arden Bell, for the sum of \$760.76, with interest at the rate of 6% per annum from June 11, 1948, plus the sum of \$2.55.

William Besser, for the sum of \$64.00, with interest at the rate of 6% per annum from May 21, 1948, plus the sum of \$2.55.

The above named plaintiffs, jointly, for the sum of \$750.00 as reasonable attorney's fees for the prosecution of said action, together with their costs of suit, taxed at \$111.00.

Plaintiffs in Cause No. A-5088

Ted Van Thiel, Patsy Van Thiel, et al, co-partners at Kennedy Hardware, and Gene Brady, all co-partners as Brady's Floor Covering, for the sum of \$474.41, with interest at 6% per annum from June 8, 1948, plus the sum of \$4.05.

E. V. Fritts, et al, co-partners as Alaska Paint and Glass Co., for the sum of \$700.00, with interest at 6% per annum from June 21, 1948, plus the sum of \$3.40.

City Electric of Anchorage, Inc., a corporation, for the sum of \$473.99, with interest at 6% per annum from June 23, 1948, plus the sum of \$2.85.

The above named plaintiffs, jointly, for the sum

of \$350.00 as reasonable attorney's fees for the prosecution of said action, together with their costs of suit, taxed at \$33.00.

Intervenors

Arthur F. Waldron and Joseph A. Columbus, co-partners as Anchorage Sand and Gravel Company, for the sum of \$377.61 on their first cause of action, with interest at 6% per annum from May 29, 1948, plus the sum of \$2.50, and for the sum of \$628.27 on their second cause of action, with interest at 6% per annum from May 18, 1948, plus the sum of \$2.50, and for the sum of \$300.00 as reasonable attorney's fees for the prosecution of said action, together with costs of suit, taxed at \$.....

Ketchikan Spruce Mills, Inc., a corporation, for the sum of \$2,717.86, with interest at 6% per annum from June 9, 1948, plus the sum of \$2.25; and Alaskan Plumbing and Heating Company, Inc., a corporation, for the sum of \$1,685.00, with interest at 6% per annum from June 18, 1948, plus the sum of \$2.25, and said last named intervenors, jointly, for the sum of \$700.00 as reasonable attorney's fees for the prosecution of said action, together with costs of suit taxed at \$.....

Ted Van Thiel, Patsy Van Thiel, et al, co-partners as Kennedy Hardware, for the sum of \$112.95, with interest at 6% per annum from June 19, 1948, plus the sum of \$4.05, and for the sum of \$50.00 as reasonable attorney's fees, together with costs of suit taxed at \$.....

Ken Hinchey and Nadine Hinchey, co-partners as Ken Hinchey Company, for the sum of \$680.49, with interest at 6% per annum from May 25, 1948, plus the sum of \$3.60, and for the sum of \$200.00 as reasonable attorney's fees for the prosecution of said action, together with costs of suit, taxed at \$.....

Ray Wolfe, Esther Wolfe, et al, co-partners as Wolfe Hardware and Furniture, for the sum of \$199.80, with interest at 6% per annum from June 10, 1948, plus the sum of \$3.60, and for the sum of \$100.00 as reasonable attorney's fees for the prosecution of said action, together with costs of suit taxed at \$.....

And It Is Further Ordered, Adjudged and Decreed,

That the intervenors, Arthur F. Waldron and Joseph A. Columbus; co-partners as Anchorage Sand and Gravel Company, have judgment against the defendant, Audrey Cutting, for the sum of \$377.61, with interest thereon at the rate of 6% per annum from May 29, 1948, to the date hereof and for their costs and disbursements herein, taxed at \$....., together with the sum of \$100.00 attorney's fees for the prosecution of said action, with interest on the whole of said sums at the rate of 6% per annum from the date hereof until paid.

That the intervenor, Ketchikan Spruce Mills, Inc., a corporation, have judgment against the defendant, Audrey Cutting, for the sum of \$2,717.86, with interest thereon at the rate of 6% per annum from June 9, 1948, to the date hereof, and for its costs and disbursements herein, taxed at \$....., together with the sum of \$....., attorney's fees for the

prosecution of said action, with interest on the whole of said sums at the rate of 6% per annum from the date hereof until paid.

It Is Further Ordered, Adjudged and Decreed, that the whole of the premises in said Findings and hereinafter described is required for the convenient use and occupation of the residence building thereon.

It Is Further Ordered and Decreed, that all and singular the said premises in said Findings and hereinafter described be sold at public auction by the United States Marshal for the Third Division, Territory of Alaska, in the manner provided by law for the sale of real estate on execution, and that the plaintiffs and intervenors to whom judgments for their respective liens have been herein awarded, or any of them, or any of the parties to the aforesaid actions may be purchasers at such sale, and that the said Marshal out of the proceeds of said sale shall retain his fees, costs, expenses, and commissions, if any, and from the balance pay to the plaintiffs and intervenors, respectively or their respective attorneys, the amount of their respective liens, including costs, disbursements and attorney's fees, with interest at the rate of 6% per annum from the date of this decree; and that if the proceeds of said sale be insufficient to pay said lien-holders in full, after deducting said Marshal's fees, costs, expenses and commissions, the same shall be applied pro rata to the payment of their respective liens; and that any balance remaining in the hands of said Marshall, after retaining his deductions as aforesaid, and after

paying the amounts due said respective lien-holders, shall be paid to the defendant, Sylvia A. Henderson, a minor; and upon the said sale being made the said Marshal shall give the purchaser or purchasers a Certificate of Sale as provided by law, and the said purchaser or purchasers shall be let into the possession of said premises, and any of the parties to this action who may be in possession of said premises, and any person or persons who, since the commencement of the aforesaid actions has come into possession under them or either of them shall deliver possession thereof to such purchaser or purchasers, on production of said Marshal's Certificate of Sale of said premises.

The following is the description of the property authorized to be sold under and by virtue of this decree:

Lot Two (2) in Block Thirty-seven D (37-D) of the South Addition to the City of Anchorage, Alaska, according to the official map and plat thereof, on file and of record in the office of the United States Commissioner and ex-Officio Recorder for Anchorage Precinct at Anchorage, Alaska, together with the residence building situated thereon.

Dated this 8th day of April, 1949.

/s/ ANTHONY J. DIMOND,
District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed and entered April 8, 1949.

[Title of District Court and Causes]

No. A-5087

No. A-5088

No. A-5087 and A-5088

NOTICE OF MOTION FOR ORDER OF STAY
OF EXECUTION

To Ray R. Bullerdick, et. al., Plaintiffs and to their attorneys:

You will please take notice that on Friday the 6th day of May, 1949, at ten o'clock a.m. of said day, or as soon thereafter as counsel can be heard, at the Court Room of the District Court at Anchorage, the defendant will move the Court for an order staying all execution proceedings on the part of the plaintiffs in the above-entitled action on the grounds that the defendants feeling themselves aggrieved by the judgment made and entered on the 8th day of April, 1949, in the above entitled cause, desire to post a supersedeas bond and perfect an appeal.

Said motion will be made and based upon this motion, copy of which is served herewith, upon the pleadings, papers, records, and files in this action.

Dated this 4th day of May, 1949.

/s/ HAROLD J. BUTCHER

[Endorsed]: Filed May 4, 1949.

[Title of District Court and Causes.]

No. A-5087

No. A-5088

No. A-5087 and A-5088

MOTION FOR ORDER OF STAY
OF EXECUTION

Come now the defendants in the above entitled action, and by their attorney, Harold J. Butcher, and moves the Court for an order staying execution on the judgment herein for the period of sixty (60) days.

This motion is based upon the fact that the defendants have posted a good and sufficient bond conditioned for the payment of the judgment herein, with interests and costs, in the event defendants fail to perfect an appeal and furnish supersedeas bond according to law, within said period of sixty (60) days.

Dated this 4th day of May, 1949.

/s/ HAROLD J. BUTCHER

[Endorsed]: Filed May 4, 1949.

United States of America,
Territory of Alaska—ss.

AFFIDAVIT

Audrey Cutting, being first duly sworn and upon her oath deposes and says:

That she is the mother and the duly appointed guardian of Sylvia A. Henderson, a minor, and that on the 8th day of April, 1949, a judgment was entered against affiant and the said Sylvia A. Henderson in the sum of Fourteen Thousand One Hundred Dollars and Eighty Cents (\$14,100.80), plus costs, by the District Court of the Third Division, Territory of Alaska;

That Sylvia A. Henderson on or about the 26th day of March, 1949, and without the knowledge of affiant left her school near Portland, Oregon, and eloped with a man, and that affiant has brought charges against said man whose name is Dick Duhaime, and has requested Police Authorities to seek out and arrest said Dick Duhaime, and the minor daughter of affiant whose whereabouts is unknown to affiant, and to this date affiant has not been able to locate said minor daughter or Dick Duhaime, the man with which she has eloped;

That as a result affiant has not been able to notify said Sylvia A. Henderson of the judgment entered against the real property of said Sylvia A. Henderson, or to notify the said Sylvia A. Henderson of the sale of said property under order of the Court for satisfaction of the judgment, and that at the date of the making of this affidavit the said Sylvia A.

Henderson, owner of Lot Number 2 in Block Number 37 D of the South Addition to the Townsite of Anchorage, does not know of the entry of said judgment against her and the property which she owns.

/s/ AUDREY CUTTING

Subscribed and sworn to before me this 18th day of May, 1949.

[Seal] /s/ HAROLD J. BUTCHER,

Notary Public in and for the Territory of Alaska.

My Commission expires April 21, 1953.

[Endorsed]: Filed May 19, 1949.

No. A-5087 and No. A-5088

HEARING ON MOTION FOR STAY OF EXECUTION

Now at this time hearing on motion for stay of execution in cause No. A-5087, entitled Ray Bullerdick, et al, Plaintiffs, versus Ralph R. Thomas, Audrey Cutting, et al, Defendants, and cause No. A-5088, entitled Ted Van Thiel, et al, Plaintiffs, versus Ralph R. Thomas, Audrey Cutting, et al, Defendants, came on regularly before the Court, the plaintiffs and intervenors not being present but represented by George B. Grigsby, Edward V. Davis and J. L. McCarrey, Jr., the defendants not being present but represented by their counsel Harold J. Butcher. The following proceedings were had, to-wit:

Argument to the Court was had by George B. Grigsby, for and in behalf of the plaintiff.

Argument to the Court was had by Edward V. Davis, for and in behalf of the Intervenor.

Argument to the Court was had by George B. Grigsby, for and in behalf of the plaintiff.

Argument to the Court was had by Harold J. Butcher, for and in behalf of the defendant.

Argument to the Court was had by Edward V. Davis, for and in behalf of the Intervenor.

Argument to the Court was had by George B. Grigsby, for and in behalf of the plaintiffs.

Whereupon the Court having heard the argument of respective counsel and being fully and duly advised in the premises, denies bond, and directs, following stipulation by and between respective counsel, the sale of subject property adjourned until 2:00 o'clock p.m. of Thursday, May 26, 1949.

Entered May 19, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT
OF APPEALS

Notice is hereby given that Audrey Cutting and Sylvia A. Henderson defendants above named, hereby appeal to the Circuit Court of Appeals for the 9th Circuit from the judgment entered in this action on the 8th day of April, 1949.

/s/ HAROLD J. BUTCHER

Attorney for Appellants

[Endorsed]: Filed May 19, 1949.

No. A-5087

MINUTE ORDER EXTENDING TIME TO
DOCKET CAUSE WITH COURT OF
APPEALS

Now at this time, upon the motion of Harold J. Butcher, counsel for Defendant Audrey Cutting, with George B. Grigsby, counsel for plaintiff, objecting thereto,

It is ordered that Defendant Cutting be, and she is hereby, given 30 days from this date to docket cause No. A-5087, entitled Ray Bullerdick, et al, plaintiffs, versus Ralph R. Thomas, et al, defendants, with the Court of Appeals, Ninth Circuit.

Entered June 14, 1949.

[Title of District Court and Causes.]

No. A-5087 and No. A-5088 Consolidated

DESIGNATION OF RECORD

Appellant designates for the record an appeal in the above entitled case the entire and complete record of proceedings including the transcript of the trial, but excepting the various motions and affidavits to intervene and to consolidate the two cases numbered A-5087 and A-5088.

/s/ HAROLD J. BUTCHER

[Endorsed]: Filed July 2, 1949.

[Title of District Court and Causes.]

No. A-5087 and No. A-5088 Consolidated.

BOND ON APPEAL

Know all men by these presents that we, Audrey Cutting as principal and Sylvia A. Henderson as principal, binding herself herein by and through her legal guardian, Audrey Cutting, and Marion P. Smith as surety, are held and firmly bound to the above named plaintiffs and all of them, and to their heirs, executors, administrators, assigns, and successors, in the full and just sum of Two Hundred Fifty Dollars (\$250.00) to be paid to the said above named plaintiffs, their heirs, executors, administrators, successors, and assigns, payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, by these presents.

Sealed with our hands and dated this 18th day of June, 1949.

The condition of this bond is such that, whereas, on the 8th day of April, 1949, in a suit pending in the above entitled court by the above named plaintiffs and Audrey Cutting and Sylvia A. Henderson as defendants, and in favor of the said plaintiffs, and the said defendants having filed Notice of Appeal to the United States Circuit Court of Appeals for the 9th Circuit, and a citation having been issued, directed to the said plaintiffs, citing them to appear in said Court at San Francisco,

California, forty days from and after the date of such citation.

Now the condition of the above obligation is such that if the said defendants shall prosecute said appeal with effect, or if they shall pay all costs of the appeal if the appeal be dismissed or the judgment is modified, then the above obligation is to be void otherwise to remain in full force and effect.

/s/ AUDREY CUTTING

Principal.

/s/ SYLVIA A. HENDERSON

Principal.

By /s/ AUDREY CUTTING

Her legal guardian.

/s/ MARION P. SMITH

Surety.

United States of America,
Territory of Alaska—ss.

Audrey Cutting for herself and as legal guardian for Sylvia A. Henderson, and Marion P. Smith, being first duly sworn, each for himself and not one for the other, deposes and says:

That I am a resident of the Territory of Alaska; that I am not a counselor or attorney at Law; that I am not a marshal, deputy marshal, commissioner, clerk of any court, or other officer of any court; that I am worth the sum of One Thousand Dollars over

and above all my debts and liabilities and exclusive of property exempt from execution.

/s/ AUDREY CUTTING

/s/ SYLVIA A. HENDERSON

By /s/ AUDREY CUTTING

Her legal guardian.

/s/ MARION P. SMITH

Subscribed and sworn to before me this 18th day of June, 1949.

/s/ HAROLD J. BUTCHER

Notary Public in and for Alaska.

My commission expires April 21, 1953.

[Endorsed]: Filed July 2, 1949.

[Title of District Court and Causes.]

No. A-5087 and No. A-5088 Consolidated.

MOTION TO EXTEND THE TIME FOR
FILING AND DOCKETING RECORD OF
APPEAL

Comes now the defendants, Audrey Cutting and Sylvia A. Henderson, and move this Honorable Court to extend the time for filing and docketing the record with the United States Court of Appeals at San Francisco for fifteen days, or to such time as will enable the Clerk of the Court and the Court Reporter to prepare the transcript of record and proceedings.

/s/ HAROLD J. BUTCHER

Attorney for Defendants.

[Endorsed]: Filed July 13, 1949.

[Title of District Court and Causes.]

No. A-5087 and No. A-5088 Consolidated.

ORDER

The defendants, Audrey Cutting and Sylvia A. Henderson, through their attorney, Harold J. Butcher, having filed a motion for extending the time for filing and docketing the record on appeal, and good cause being shown therefore, it is hereby:

Ordered that the time for filing and docketing the record on appeal in the above entitled cause be extended for a period of twenty-one days from the date of this order.

Dated at Anchorage, Alaska, this 14th day of July, 1949.

/s/ ANTHONY J. DIMOND
District Judge

Entered July 14, 1949.

[Endorsed]: Filed July 14, 1949.

CERTIFICATE OF CLERK TO
TRANSCRIPT OF RECORD

United States of America,
Territory of Alaska,
Third Division—ss.

I, M. E. S. Brunelle, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the foregoing and hereto annexed

116 pages, numbered from 1 to 116, inclusive, are a full, true and correct transcript of the records and files of the proceedings in the above entitled cause as the same appears on the records and files in my office; that this transcript is made in accordance with the designation of record filed in my office on the 2nd day of July, 1949; that the foregoing transcript has been prepared, examined and certified to by me, and the costs thereof, amounting to \$71.20, has been paid to me by Harold J. Butcher, counsel for Defendants Cutting and Henderson herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 29th day of July, 1949.

[Seal] /s/ M. E. S. BRUNELLE,
Clerk of the District Court, Territory of Alaska,
Third Division.